

IN THE

**United States
Circuit Court of Appeals**

For the Ninth Circuit

IN THE MATTER OF THE PETITION OF THE PACIFIC
TOW BOAT COMPANY, A CORPORATION, OWNER
OF THE AMERICAN TUG DEFENDER, FOR A
LIMITATION OF LIABILITY.

PACIFIC TOW BOAT COMPANY, A CORPORATION,
PETITIONER-APPELLANT,

vs.

DOMINION MILL COMPANY, A CORPORATION,
CLAIMANT-APPELLANT.

Apostles on Appeal

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

FILED

NOV 1 1921

F. D. MONCKTON

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STATEMENT.

Time of commencement of suit: April 5, 1920.

Names of the parties to the suit:

Pacific Tow Boat Company, a corporation, petitioner-appellant.

Dominion Mill Company, a corporation, claimant-appellee.

Names and addresses of Counsel:

William H. Gorham, 652 Colman Building, Seattle, Washington, for petitioner-appellant;

John E. Ryan,

Grover E. Desmond,

608 Pantages Building, Seattle, Washington, for claimant-appellee.

Dates of filing of pleading:

Petition, filed April 5, 1920.

Answer, filed October 4, 1920.

Claim, filed October 2, 1920.

Appraisal of Tug DEFENDER and freight pending under order of court; confirmation of appraisal by the court.

Stipulation with an approved corporate surety for payment of appraised value of Tug DEFENDER and freight pending, into court, with interest at the rate of six per cent per annum from date of said stipulation, and costs, approved by the court.

Monition against all persons claiming damages, etc., issued by order of the court, with return of the U. S. Marshal thereon.

Order of court restraining further prosecution of any and all suits against the petitioner Pacific Tow Boat Company, a corporation, in respect to such claims.

Stipulation as to amount of recovery.

Order of reference.

Time of the trial before the Referee: March 16-17, June 22-24, 1921.

Submission of case on report of Referee: June 30, 1921.

The name of the judge hearing said matter was the Honorable Jeremiah Neterer, Judge of the United States Dis-

trict Court for the Western District of Washington, Northern Division.

The date of the entry of the final decree: August 2, 1921.

The date when the notice of appeal was filed: Aug. 2, 1921.

IN THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.
In Admiralty—No. 5207.

In the Matter of the Petition of the PACIFIC TOWBOAT COMPANY, a corporation, owner of the American Tug DEFENDER, for a limitation of liability.

PETITION FOR LIMITATION OF LIABILITY.

To the Honorable Jeremiah Neterer, Judge of the above entitled court, sitting in admiralty:

The petition of the Pacific Towboat Company, owner of the American Tug DEFENDER, in a cause of limitation of liability, civil and maritime, respectfully shows:

I.

That at all times herein mentioned the petitioner, Pacific Towboat Company, was and now is a corporation organized and existing under the laws of the State of Washington and on the 10th day of December, 1918, and at all times thereafter was and now is sole owner of the American Tug *Defender*.

II.

That in the month of December, 1918, and prior to the 11th day of said month the libellant is informed, verily believes and states the fact to be, that Canyon Lumber Company, a corporation, of Everett, Washington, contracted with the Dominion Mill Company, a corporation of the State of California, doing business in the State of Washington, to sell and deliver to said Dominion Mill Company a cargo of about two hundred ninety-four thousand (294,000) feet of lumber F. O. B. scow *Claire*, said scow then being owned by said Canyon Lumber Company, at the latter's mill on the Snohomish river in the City of Everett, State of Washington, and to charter to said Dominion Mill Company the said scow and the use of the whole thereof for the purpose of transporting said lumber from said mill on the Snohomish river

to the port of Port Blakely, Washington, and that pursuant to said contract said Canyon Lumber Company thereafter and prior to libellant's taking said scow in tow as hereinafter stated delivered to the Dominion Mill Company on board said scow at said mill on the Snohomish river said cargo of lumber.

III.

That on or about December 11th, 1918, said Dominion Mill Company requested libellant to tow said scow with said cargo from said mill on the Snohomish river to the mill at Port Blakely, Washington, and pursuant to said request on said last named day at about the hour of 10 o'clock A. M. the American Tug *Defender*, owned and operated by libellant, being then and there and at all times thereafter herein mentioned in all respects properly tackled, apparelled, supplied, manned and equipped with a full complement of officers and seamen aboard, and being in all respects tight, staunch, strong and seaworthy and with sufficient power to perform said towage service, took said scow with said cargo of lumber on board thereof in tow bound for said port of Port Blakely.

IV.

That said tug proceeded with said scow and cargo in tow to Priest Point at the mouth of said Snohomish river and laid there one tide and with a rising glass and smooth sea at about the hour of 11 o'clock P. M. of said 11th day of December, 1918, proceeded from Priest Point for Port Blakely.

V.

That at about the hour of 3 o'clock A. M. on the following morning said tug with said scow and cargo in tow, being then off the town of Edmonds, State of Washington, a light southeast wind and but little sea prevailing, the officers in charge of the navigation of said tug looking back at the scow in tow ascertained that her lights were out and thereupon, upon shortening the hawser, found that the scow had dumped the larger part of her cargo into the sea from some cause unknown to them or any of them or to libellant.

VI.

That the master of said tug immediately went ashore near Point Meadows, Washington, to advise libellant of said loss of cargo and to request assistance, and thereupon, upon libellant's instructions, tugs were immediately dispatched to

the assistance of said tug *Defender*, when said scow, then submerged to her deck, was towed to Port Blakely with a portion of said cargo, to-wit:-----feet board measure of lumber still on her in a damaged condition, arriving at Port Blakely on the 12th day of December, 1918.

VII.

That a large portion, to-wit:-----feet of said lumber constituting said cargo, damaged as aforesaid, was picked up by the libellant in a damaged condition and towed to Everett and there impounded and said Dominion Mill Company notified by libellant of the same; and about-----feet of said lumber was not recovered at all but became totally lost.

VIII.

That the said tug *Defender* is now lying at Ballard in the City of Seattle and libellant avers that the value of said tug at the time of said towage service and upon the completion of the same at Port Blakely did not exceed the sum of \$2,000.00, and that the then pending towage was the sum of \$75.00, which amount was the regular tariff rate for such service.

IX.

That the dumping of said cargo as aforesaid and the consequent damage and loss of said lumber as aforesaid was in no wise caused by fault or negligence on the part of said tug, her master, officers or crew, or this libellant, but solely by reasons unknown to libellant.

X.

That said dumping of said cargo aforesaid and the loss, damage and injury above referred to were done, occasioned and incurred without fault on the part of petitioner and without its privity or knowledge.

XI.

That the said Dominion Mill Company, claiming to have suffered loss and been damaged by reason of the dumping of said cargo of lumber as aforesaid, through the carelessness and negligence of the defendant, has brought suit against your petitioner in the Superior Court of the State of Washington, in and for the County of King, to recover damages therefor in the sum of \$7,446.18, which suit is still pending and undetermined and in which suit your petitioner has

appeared; that the amount of damage claimed by said Dominion Mill Company in said suit far exceeds the amount of the value of said tug *Defender* either now or on said December 12th, 1918, and including her freight pending in the sum of \$75.00, as aforesaid.

XII.

That petitioner desires to claim the benefit of the provisions of Sections 4283, 4284 and 4285 of the Revised Statutes of the United States, and the acts amendatory thereof and supplemental thereto, and in this proceeding by reason of the facts and circumstances hereinbefore set forth to contest its liability, the liability of said tug *Defender* to any extent whatever for any and all loss, destruction, damage and injury caused by and resulting from the operation and management of said tug *Defender* by your petitioner, its servants and agents, including the officers of said tug or any of them, on said 11th and 12th days of December, 1918.

XIII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

WHEREFORE your petitioner prays that according to the course of this honorable court in causes of admiralty and maritime jurisdiction, this court will cause due appraisal to be had and the amount of the value of petitioner's interest in said tug *Defender* at the close of said 12th day of December, 1918, and of the value of her freight then pending, and will make an order for the payment of the same into this court or for the giving of a stipulation providing for the payment thereof as ordered by this court; and that this court will issue a monition to all persons claiming damages for any and all losses, destruction, damage or injury caused by or resulting from the operation and management of said tug by your petitioner on said 11th and 12th days of December, 1918, against said petitioner or against said tug, citing them to appear before a commissioner to be named by the court and make due proof of their respective claims at or before a time certain to be fixed by said writ; they also to appear and answer on oath the allegations of the petition according to law and the practice of this court; and that this court will issue its injunction restraining the prosecution of the aforesaid suit by said Dominion Mill Company and the commencement and prosecution hereafter of any and all suits, causes or legal proceedings against said petitioner or against

said launch in respect of any claim or claims arising out of the management or operation of said tug on said 11th and 12th days of December, 1918, and that the court in this proceeding will adjudge the petitioner and the tug *Defender* are not or either of them is liable to any extent or at all for said loss, damage or injury; or, if it shall adjudge said petitioner or said tug or either of them are liable, then that the liability of the petitioner be limited to the amount of the value of its interest in said tug at the close of said 12th day of December, 1918, and said freight then pending, and that the moneys paid or secured to be paid as aforesaid be divided pro rata among such claimants as may duly prove their claims before the commissioner aforesaid, saving to all parties any priority to which they may be legally entitled; and that petitioner may have such other and further relief in the premises as may be just.

PACIFIC TOWBOAT COMPANY,
Petitioner.

WILLIAM H. GORHAM,
Proctor for Petitioner.

STATE OF WASHINGTON, COUNTY OF KING—SS.

F. M. DUGGAN, being first duly sworn on oath deposes and says: That he is the President of the Pacific Towboat Company, a corporation, petitioner in the above entitled action; that he has heard the foregoing petition read, knows the contents thereof and believes the same to be true.

F. M. DUGGAN.

Subscribed and sworn to before me this 2nd day of April, 1920.

R. C. HAZEN,
*Notary Public in and for the State of Wash-
ington, residing at Seattle, Washington.*

Endorsed: Filed in the United States District Court, West-
ern District of Washington, Northern Division, April 5,
1920.

F. M. HARSHBERGER, *Clerk.*
S. E. LEITCH, *Deputy.*

IN THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

In Admiralty—No. 5207.

In the Matter of the Petition of the PACIFIC TOWBOAT COMPANY, a corporation, owner of the American Tug DEFENDER, for a limitation of liability.

ORDER APPOINTING APPRAISERS.

Upon reading the libel and petition heretofore filed herein by the Pacific Towboat Company, owner of the Tug *Defender*, praying for a limitation of its liability and for an appraisal of the amount of the value of its interest in said tug and her freight pending at the close of the 12th day of December, 1918, and it appearing to the court that due service of a notice of a monition for the appointment of appraisers in the above entitled matter and of bringing the same on for hearing at this time, together with a copy of the petition heretofore filed herein has been made upon the Dominion Mill Company, a corporation, and Messrs. Ryan & Desmond, its attorneys;

IT IS ORDERED, That Captain John L. Anderson, Captain A. A. Paysse and Frank Moran be and they are hereby appointed appraisers to appraise the amount of the value of the interest of petitioner in said tug and her freight pending at the close of the 12th day of December, 1918, which when ascertained be paid into the registry of this court by petitioner to abide the event of this proceeding, or at the option of said petitioner that it may file a stipulation in such appraised amount with interest from said 12th day of December, 1918, providing for the payment of such amount as ordered by the court, not to exceed such appraised amount and interest, and with sureties to be approved by this court.

Dated Seattle, Washington, April 13, 1920.

JEREMIAH NETERER, *Judge.*

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, April 12, 1920.

F. M. HARSHBERGER, *Clerk.*
S. E. LEITCH, *Deputy.*

IN THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

In Admiralty—No. 5207.

In the Matter of the Petition of the PACIFIC TOWBOAT COMPANY, a corporation, owner of the American Tug DEFENDER, for a limitation of liability.

APPRAISERS' REPORT.

To the Honorable Jeremiah Neterer, Judge of the above entitled court:

The undersigned having been duly appointed appraisers and sworn as such to appraise the value of the interest of the Pacific Towboat Company, owner of the American Tug *Defender*, in said Tug and her freight pending at the close of the 12th day of December, 1918, do hereby report that they have examined and appraised the value of the interest of said petitioner in said Tug and her freight pending, and do find as follows:

That the present value of said Tug is the sum of \$2,500.00; that the value of said Tug on the 12th day of December, 1918, did not exceed the sum of \$2,800.00; that the amount of freight pending on account of said Tug at the close of the 12th day of December, 1918, for towage service rendered the Dominion Mill Company on December 11th and 12th, 1918, is the sum of \$75.00; that the value of the interest of petitioner in said Tug at the close of the 12th day of December, 1918, was the sum of \$-----.

All of which is respectfully submitted.

Dated Seattle, Washington, June 2, 1920.

FRANK MORAN,
J. L. ANDERSON,
A. A. PAYSSE,

Appraisers:

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, June 3, 1920.

F. M. HARSHBERGER, *Clerk.*
S. E. LEITCH, *Deputy.*

IN THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

No. 5207.

In the Matter of the Petition of the PACIFIC TOWBOAT COMPANY, a corporation, owner of the American Tug DEFENDER, for a limitation of liability.

This cause coming on to be heard on the report of the appraisers heretofore filed herein and on the motion of the petitioner for an order confirming said report, counsel for petitioner and Messrs. Ryan & Desmond, attorneys for the Dominion Mill Company, a corporation, being present in court;

It appearing to the court that due notice of the hearing of this motion has been given to the Dominion Mill Company, a corporation, named in the petition and libel herein, by service on their attorneys of record named in said petition;

And it appearing to the court that the value of the Tug *Defender* and of her freight pending at the close of the 12th day of December, 1918, and of petitioner's interest therein at the close of said last named date was the sum of \$2,875.00;

The court being fully advised in the premises,

It is now ORDERED that the report of said appraisers be and it is hereby approved and confirmed in all things;

It is further ORDERED that the value of the interest of petitioner in the Tug *Defender* and her freight pending at the close of the 12th day of December, 1918, be and the same is hereby fixed at \$2,875.00.

That said appraisers be and they are hereby discharged from further service herein.

Dated Seattle, Washington, June 14, 1920.

JEREMIAH NETERER, *Judge.*

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, June 14, 1920.

F. M. HARSHBERGER, *Clerk.*
S. E. LEITCH, *Deputy.*

IN THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

No. 5207.

In the Matter of the Petition of the PACIFIC TOWBOAT COMPANY, a corporation, owner of the American Tug DEFENDER, for a limitation of liability.

STIPULATION TO PAY APPRAISED VALUE.

WHEREAS, a libel and petition have been heretofore filed herein by the Pacific Towboat Company as owner of the American Tug *Defender* praying for a limitation of liability for reasons and causes in said libel and petition mentioned, and for an appraisal of said Tug and her freight pending, and of the value of petitioner's interest therein, and due appraisal has been made under the direction of the court of the amount of the value of the interest of petitioner therein at the close of the 12th day of December, 1918, and the same having been appraised at the sum of \$2,875.00, and said appraisal having been confirmed by the court and said interest of said petitioner therein by an order of court herein fixed at the sum of \$2,875.00.

The said petitioner, Pacific Towboat Company, a corporation, as principal, and Fidelity & Deposit Company of Maryland, its surety, the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of said petitioner or its surety execution may issue against their goods, chattels and lands for the sum of \$5,750.00 with interest from the 12th day of December, 1918;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, for the benefit of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of \$5,750.00, together with interest thereon from the 12th day of December, 1918, conditioned that the above named petitioner shall pay into the registry of said court, for the benefit of whom it may concern, the said sum of \$2,875.00, the appraised amount as specified with interest thereon from the 12th day of December, 1918, unless otherwise ordered by the court or upon appeal by the appellate court.

Dated Seattle, Washington, June 14, 1920.

PACIFIC TOWBOAT COMPANY,
By A. L. McNEALY, *Its Manager.*

FIDELITY AND DEPOSIT COMPANY OF MARYLAND.
J. BAIRD, *Agent.*
J. A. CATHCART, *Attorney-in-Fact.*

I approve of the sufficiency of the sureties to the within bond.

Dated Seattle, Washington, June 15, 1920.

JEREMIAH NETERER, *Judge.*

Approved as to form and surety.

RYAN & DESMOND.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, June 15, 1920.

F. M. HARSHBERGER, *Clerk.*

S. E. LEITCH, *Deputy.*

IN THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

In Admiralty—No. 5207.

In the Matter of the Petition of the PACIFIC TOWBOAT COMPANY, a corporation, owner of the American Tug DEFENDER, for a limitation of liability.

ORDER FOR MONITION AND RESTRAINING ORDER.

On reading the petition herein of the above named Pacific Towboat Company praying for limitation of its liability as owner of the American Tug *Defender* by reason of certain loss of and damage to, on December 11 and 12, 1918, a cargo of lumber laden on the scow *Claire*, in tow of said tug;

It appearing that an action has heretofore on March 30, 1920, been brought in the Superior Court of the State of Washington for King County by the Dominion Mill Company, a corporation, alleged owner of said cargo of lumber, against said Pacific Towboat Company for said loss and damage, for the sum of \$7,446.18;

And an order having heretofore been entered herein whereby Frank Moran, J. V. Anderson and A. A. Paysse were appointed appraisers to ascertain and appraise and report to this court the value of the interest of the petitioner in said Tug and in her freight pending for the voyage in the petition mentioned;

And due notice of the proceedings to appraise the said Tug having been given and said appraisal having been duly had and said appraisers having duly filed their report herein wherein they find the value of the interest of the petitioner in said Tug and her pending freight to be the sum of

\$2,875.00, and no exceptions to said report having been filed and said report having been confirmed and said petitioner having filed in the office of the clerk of this court a stipulation in the sum of \$5,750.00 with the Fidelity and Deposit Company of Maryland, as surety, conditioned as required by law, which stipulation has been duly approved by this court;

Now, on motion of proctor for petitioner,

It is ORDERED, that a monition issue out of and under the seal of this court against all persons claiming damages for any and all loss, destruction, damage, or injury caused by or resulting from the casualty set forth in said petition herein, citing them and each of them to appear before this court and make due proof of their respective claims on or before the 4th day of October, 1920, at 11 o'clock A. M. of that day, and A. C. Bowman, Esq., is hereby appointed commissioner before whom proof of all claims which may be presented pursuant to said monition shall be made, subject to the rights of any person or persons interested to controvert or question the same. And it is further

ORDERED, that public notice of said monition be given by publication thereof in the Journal of Commerce, a newspaper published in the City of Seattle, once a day for fourteen days and thereafter once a week until the return day of said monition, and that the first publication of said monition be at least three months before said return day. And it is further

ORDERED, that a copy of said monition and of this order be served at least thirty days before the return day of said monition upon Messrs. Ryan & Desmond, attorneys for said Dominion Mill Company in said action in said Superior Court; and it is further

ORDERED, that the further prosecution of said action in said Superior Court and the prosecution of any and all other suits, actions and proceedings of any nature or description against said petitioner or against said Tug in respect of any claim for damages for loss, destruction, damage or injury on account of the casualty on the voyage of said Tug on December 11 and 12, 1918, set forth in said petition herein, be and the same hereby is restrained; and it is further

ORDERED, that the service of this order as a restraining order be made within the Western District of Washington in the usual manner and in any other District of the United States by delivery by the Marshal of the United States for such District, of a certified copy of this order to the person

or persons to be restrained, or their attorneys or proctors acting in that behalf.

Dated Seattle, June 15, 1920.

JEREMIAH NETERER, *Judge.*

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, June 15, 1920.

F. M. HARSHBERGER, *Clerk.*
S. E. LEITCH, *Deputy.*

IN THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

In Admiralty—No. 5207.

In the Matter of the Petition of the PACIFIC TOWBOAT COMPANY, a corporation, owner of the American Tug DEFENDER, for a limitation of liability.

MONITION.

The President of the United States of America, To the Marshal of the United States for the Western District of Washington:

WHEREAS, a libel and petition hath been filed in the District Court of the United States for the Western District of Washington, Northern Division, on the 5th day of April, 1920, by the Pacific Towboat Company, a corporation, owner of the American Tug *Defender*, praying for a limitation of its liability concerning the loss, damage or injury occasioned by or resulting from the operation or management of said Tug by petitioner on the 11th and 12th days of December, 1918, for the reasons and causes in said libel and petition mentioned, and praying a monition of the court in that behalf be issued and that all persons claiming damage for any such loss, damage or injury may be thereby cited to appear before the court and make due proof of their respective claims, and all proceedings being had, if it shall appear that said petitioner is not liable for any loss, damage or injury and it may be so finally decreed by this court;

AND WHEREAS, the value of the interest of said petitioner in said Tug and her freight pending at the close of the 12th day of December, 1918, has been appraised in the sum of \$2,875.00, and said appraisal confirmed by an order of said court;

AND WHEREAS, a stipulation in the amount of said

appraised value with interest from December 12th, 1918, with a surety approved by the court has been filed herein by said petitioner and the court has ordered a monition to issue against all persons claiming damage by any loss, damage or injury against said petitioner or against said Tug *Defender* caused by or resulting from the operation and management of said Tug by petitioner on the 11th and 12th days of December, 1918, citing them to appear and make due proof of their respective claims;

You are therefore COMMANDED to cite all persons claiming damages against said petitioner or against said American Tug *Defender* for any loss, damage or injury caused by or resulting from the operation and management of said Tug by petitioner on December 11th and 12th, 1918, to appear before said court and make due proof of their respective claims before A. C. Bowman, Esq., Commissioner of the United States District Court for the Western District of Washington, Northern Division, at his office, room 536 Central Building, in the City of Seattle, State of Washington, before the 4th day of October, 1920, at 11 o'clock, A. M.; and you are also Commaned to cite such claimants to appear and answer the allegations of the libel and petition herein on or before the last named date or within such further time as the court may grant, to have and receive such relief as may be due.

And for what you have done in the premises do you make return to this court together with this Writ.

WITNESS the Honorable Jeremiah Neterer, Judge of the United States District Court for the Western District of Washington, this 15th day of June, 1920, and the 144th year of the Independence of the United States of America.

F. M. HARSHBERGER, *Clerk.*
S. E. LEITCH, *Deputy.*

RETURN ON SERVICE OF WRIT.

United States of America, Western District
of Washington—ss.

I hereby certify and return that I executed the annexed monition by handing to and leaving a true and correct copy thereof with Ryan & Desmond, as ordered by W. H. Gorham, attorney for petitioner, at Seattle, Washington, in said District, on the 15th day of June, 1920.

JOHN M. BOYLE, *U. S. Marshal.*
By A. Rook, *Deputy.*

In obedience to within writ I did advertise the petition for limitation of liability Tug *Defender* as commanded.

JOHN M. BOYLE, *U. S. Marshal.*

W. E. THEODORE, *Deputy.*

Seattle, Wash., Sept. 20, 1920.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, September 20, 1920.

F. M. HARSHBERGER, *Clerk.*

S. E. LEITCH, *Deputy.*

IN THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

No. 5207.

In the Matter of the Petition of the PACIFIC TOWBOAT COMPANY, a corporation, owner of the American Tug DEFENDER, for a limitation of liability.

To the Honorable Judges of the Above Entitled Court:

I herewith return the claim filed by the Dominion Mill Company, pursuant to the order of the court in the above entitled cause, to-wit:

Claim in the sum of \$7,446.18, filed with me October 2nd, 1920.

Respectfully submitted,

A. C. BOWMAN,

October 26, 1920.

U. S. Commissioner.

IN THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

In Admiralty—No. 5207.

In the Matter of the Petition of the PACIFIC TOWBOAT COMPANY, a corporation, owner of the American Tug DEFENDER, for a limitation of liability.

CLAIM OF DOMINION MILL COMPANY FOR
DAMAGES.

Comes now the DOMINION MILL COMPANY, a corporation, in the above matter, and, in pursuance to the monition herein issued, presents and files with A. C. Bowman, Esq., Commissioner of the United States District Court for the Western District of Washington, Northern Division, its claim

and makes claim against the above named Pacific Towboat Company, a corporation, as follows:

I.

That at all times hereinafter mentioned the Dominion Mill Company was and now is a corporation organized and existing under and by virtue of the laws of the State of California, and is authorized to and does do business within, the State of Washington, and has paid all license fees now due the State of Washington.

II.

That the petitioner, the Pacific Towboat Company, is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal place of business at Seattle, King County, its business consisting of operating tug boats for hire for towing of scows, barges and other craft upon the navigable waters within, and bordering upon the shores, of the State of Washington.

III.

That the manufacturing plant and shipping port of the claimant is at Port Blakely, on Bainbridge Island, in King County, Washington, and a material part of the business of the claimant is that of selling lumber for export trade.

IV.

That heretofore and on or about the 12th day of December, 1918, the claimant had purchased a shipment of lumber for export trade, delivery of which was to be made on a scow at the plant of the Canyon Lumber Company on the Snohomish River, in Snohomish County, Washington.

V.

That the claimant employed the petitioner to tow the said scow of lumber to claimant's mill at Port Blakely, Washington.

VI.

That said petitioner and its employees, the master and crew, of the Tug *Defender*, which Tug was owned by the petitioner and assigned for the towing of said lumber, carelessly and negligently failed and neglected to use reasonable care in the handling and towing thereof in that while the

said scow was being towed down the Snohomish River by the said Tug, they allowed the scow to come in contact with the bank of the river, thereby cracking, straining and breaking the same and causing it to leak, and, notwithstanding the condition of such scow, which would have been disclosed by examination, they failed so to examine the same and proceeded into the waters of Puget Sound with the same in such damaged condition when the weather was unsafe for towing, and they failed and neglected to use reasonable care to keep said scow, while en route from the Snohomish River to the plant of the company, free from water, but allowed the same to become swamped in said Puget Sound and a large part of its cargo of lumber to be dumped overboard into the water; that by reason thereof 248,206 feet of said lumber was lost and damaged, which lumber was of the reasonable value of Thirty-two (\$32.00) Dollars per thousand, and by reason thereof this claimant, the Dominion Mill Company, has been damaged in the sum of Seven Thousand Four Hundred Forty-six and 18/100 (\$7,446.18) Dollars; that said collision was caused by and contributed to by the officers, agents and servants of the said Tug *Defender*.

WHEREFORE, this claimant, Dominion Mill Company, presents its claim against the said Pacific Towboat Company and the American Tug *Defender*, in the sum of Seven Thousand Four Hundred Forty-six and 18/100 (\$7,446.18) Dollars.

RYAN & DESMOND,
Proctors for Dominion Mill Company.

State of Washington, County of King—ss.

WILLIAM MITCHELL, being first duly sworn, on oath states: That he is manager of the above named claimant, Dominion Mill Company, a corporation, and the only officer thereof within the State of Washington and the above district; that he has read the foregoing claim, knows the contents thereof, and believes the same to be true.

WILLIAM MITCHELL.

Subscribed and sworn to before me this 1st day of October, A. D. 1920.

GROVER E. DESMOND,
*Notary Public in and for the State of
Washington, residing at Seattle.*

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, October 26, 1920.

F. M. HARSHBERGER, *Clerk.*
S. E. LEITCH, *Deputy.*

IN THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

No. 5207.

In the Matter of the Petition of the PACIFIC TOWBOAT COMPANY, a corporation, owner of the American Tug DEFENDER, for a limitation of liability.

ANSWER TO PETITION FOR LIMITATION
OF LIABILITY.

To the District Court of the United States for the Western District of Washington:

Comes now Dominion Mill Company, a corporation, claimant in the above entitled matter, having filed its Claim with A. C. Bowman, Esq., Commissioner of the United States District Court for the Western District of Washington, Northern Division, and, for answer to the Petition for limitation of liability of Pacific Towboat Company, a corporation, owner of the American Tug *Defender*, admits, denies and alleges, as follows:

I.

For answer to Paragraph I. of said petition, this Claimant admits the same.

II.

For answer to Paragraph II. of said Petition, this Claimant admits the same.

III.

For answer to Paragraph III. of said Petition, this Claimant denies that the American Tug *Defender* was, at the time therein mentioned, properly tackled, apparalled, supplied, manned and equipped with a full complement of officers and seamen aboard, and being in all respects tight, staunch, strong and seaworthy and with sufficient power to perform said towage service, and admits each and every other allegation and averment therein contained.

IV.

For answer to Paragraph IV. of said Petition, this Claimant admits that the tug proceeded with said scow and cargo in tow to Priest Point at the mouth of the Snohomish River and then proceeded on the 11th day of December, 1918, from Priest Point for Port Blakely, and denies each and every allegation and averment therein contained.

V.

For answer to Paragraph V. of said Petition, this Claimant admits that the scow had dumped the larger part of her cargo into the sea and denies each and every other allegation and averment therein contained.

VI.

For answer to Paragraph VI. of said Petition, this Claimant admits that the scow was submerged to her deck and was towed to Port Blakely in a damaged condition on the 12th day of December, 1918, and it alleges that it has no knowledge or information sufficient to form a belief as to the truth or falsity of the other allegations therein contained, and therefore denies the same.

VII.

For answer to Paragraph VII. of said Petition, this Claimant denies the same.

VIII.

For answer to Paragraph VIII. of said Petition, this Claimant alleges that it has no knowledge or information sufficient to form a belief as to the truth or falsity of the allegations therein contained and therefore denies the same.

IX.

For answer to Paragraph IX. of said Petition, this Claimant denies the same.

X.

For answer to Paragraph X. of said Petition, this Claimant denies the same.

XI.

For answer to Paragraph XI. of said Petition, this Claimant admits the same.

XII.

For answer to Paragraph XII. of said petition, this Claimant denies the same.

XIII.

For answer to Paragraph XIII. of said Petition, this Claimant denies the same.

Further answering said Petition and in resistance to the same, this Claimant alleges:

I.

That at all times hereinafter mentioned the Dominion Mill Company was and now is a corporation organized and existing under and by virtue of the laws of the State of California, and is authorized to and does do business within the State of Washington, and has paid all license fees now due the State of Washington.

II.

That the petitioner, the Pacific Towboat Company, is a corporation, organized and existing under and by virtue of the laws of the State of Washington, with its principal place of business at Seattle, King County, its business consisting of operating tug boats for hire for towing of scows, barges and other craft upon the navigable waters within, and bordering upon the shores of, the State of Washington.

III.

That the manufacturing plant and shipping port of the claimant is at Port Blakely, on Bainbridge Island, in Kitsap County, Washington, and a material part of the business of the claimant is that of selling lumber for export trade.

IV.

That heretofore and on or about the 12th day of December, 1918, the claimant had purchased a shipment of lumber for export trade, delivery of which was to be made on a scow at the plant of the Canyon Lumber Company on the Snohomish River, in Snohomish County, Washington.

V.

That the claimant employed the petitioner to tow the said scow of lumber to claimant's mill at Port Blakely, Washington.

VI.

That said petitioner and its employees, the master and crew, of the tug *Defender*, which tug was owned by the petitioner and assigned for the towing of said lumber, carelessly and negligently failed and neglected to use reasonable care in the handling and towing thereof, in that, while the said scow was being towed down the Snohomish River by the said tug, they allowed the scow to come in contact with the bank of the river, thereby cracking, straining and break-

ing the same and causing it to leak, and, notwithstanding the condition of such scow, which would have been disclosed by examination, they failed so to examine the same and proceeded into the waters of Puget Sound with the same in such damaged condition when the weather was unsafe for towing, and they failed and neglected to use reasonable care to keep said scow, while en route from the Snohomish River to the plant of the company, free from water, but allowed the same to become swamped in said Puget Sound and a large part of its cargo of lumber to be dumped overboard into the water; that by reason thereof, 248,206 feet of said lumber was lost and damaged, which lumber was of the reasonable value of Thirty-two (\$32.00) Dollars per thousand, and by reason thereof this claimant, the Dominion Mill Company, has been damaged in the sum of Seven Thousand Four Hundred Forty-six and 18/100 (\$7,446.18) Dollars; that said collision was caused and contributed to by the officers, agents and servants of the said tug *Defender*.

WHEREFORE, this Claimant prays that this Honorable Court be pleased to pronounce against the Petition aforesaid and decree the payment of this Claimant's claim herein in the amount of Seven Thousand Four Hundred Forty-six and 18/100 (\$7,446.18) Dollars, and to condemn the petitioner in costs, and that this petitioner have such other and further relief in the premises as in law and justice it might be entitled to receive.

RYAN & DESMOND,
Proctors for Claimant.

State of Washington, County of King.—ss.

WILLIAM MITCHELL, being first duly sworn, on oath, states: That he is Manager of the above named Claimant, Dominion Mill Company, a corporation, and the only officer thereof within the State of Washington and the above district; that he has read the foregoing claim, knows the contents thereof and believes the same to be true.

WM. W. MITCHELL.

Subscribed and sworn to before me this 1st day of October, A. D. 1920.

GROVER E. DESMOND,
*Notary Public in and for the State of
Washington, residing at Seattle.*

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, October 4, 1920.

F. M. HARSHBERGER, *Clerk.*
S. E. LEITCH, *Deputy.*

IN THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

In Admiralty—No. 5207.

In the matter of the Petition of THE PACIFIC TOWBOAT COMPANY, a Corporation, Owner of the American Tug DEFENDER, for Limitation of Liability.

STIPULATION.

IT IS HEREBY STIPULATED by and between the parties hereto, through their respective attorneys under-signed, that the above entitled matter may be stricken from the trial calendar of the above entitled Court and that an Order may be entered referring said matter for proof on the merits to A. C. BOWMAN, Esq., United States Commissioner of said Court, and that the hearing before said United States Commissioner shall commence at 10 o'clock a. m. on the 16th day of March, 1921, and shall continue from day to day thereafter, Sundays and Holidays excluded, until the end thereof.

IT IS FURTHER STIPULATED that the Dominion Mill Company, Claimant in the above entitled matter, waives proof upon the part of Petitioner, the Pacific Towboat Company, of the allegations of the Petition for Limitation of Liability, and that, in any event, notwithstanding proof on the hearing before said Commissioner, no Decree, if any, shall be entered in said matter in favor of said Claimant and against the Pacific Towboat Company in excess of Twenty-seven Hundred (\$2700.00) Dollars and Costs.

Dated at Seattle, Washington, this 7th day of March, 1921.

WILLIAM H. GORHAM,
Attorney for Petitioner.

RYAN & DESMOND,
Attorneys for Claimant.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, March 9, 1921.

F. M. HARSHBERGER, *Clerk.*
S. E. LEITCH, *Deputy.*

UNITED STATES DISTRICT COURT, WESTERN
DISTRICT OF WASHINGTON, NORTHERN
DIVISION.

In Admiralty—No. 5207.

In the Matter of the Petition of PACIFIC TOW BOAT COMPANY,
a Corporation, Owner of the American Tug DE-
FENDER, for a Limitation of Liability.

ORDER OF REFERENCE.

Upon reading the stipulation between the parties in the
above entitled Matter, filed in said Matter on March 9th, 1921,

It is Ordered that said Matter be referred to A. C. Bow-
MAN, Esq., United States Commissioner of the above entitled
Court, to take the testimony therein and report the same to
this Court.

Dated, March 10, 1921.

JEREMIAH NETERER, *Judge.*

Endorsed: Filed in the United States District Court, West-
ern District of Washington, Northern Division, March
10, 1921.

F. M. HARSHBERGER, *Clerk.*
S. E. LEITCH, *Deputy.*

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF WASH-
INGTON, NORTHERN DIVISION.

No. 5207.

In the Matter of the Petition of THE PACIFIC TOWBOAT COM-
PANY, a Corporation, Owner of the American Tug DE-
FENDER, for Limitation of Liability, *Petitioner.*
DOMINION MILL COMPANY, a Corporation, *Claimant.*

TESTIMONY REPORTED BY COMMISSIONER.

To the Honorable Judges of the Above Entitled Court:

Pursuant to the order of reference herein, and on this
16th day of March, 1921, the parties appeared before me,
the Petitioner being represented by Mr. William H. Gorham,
and the Claimant being represented by Messrs. Ryan & Des-
mond, the following proceedings were had and testimony
offered:

MR. GORHAM: In as much as the Claimant, Dominion Mill Company, has stipulated waiving proof on the part of the Petitioner, of the allegations of the Petition for Limitation of Liability; and, that in any event, notwithstanding proof on the hearing before said Commissioner, no decree, if any, shall be entered in said matter in favor of said Claimant and against the Pacific Towboat Company in excess of \$2700.00 and costs.

That it is now agreed that the petition of the Petitioner shall stand as an answer to the answer of the Claimant; and that the allegations of the answer in the further answer and defense, shall be deemed denied where not denied in said Petition.

MR. RYAN: That is right.

MR. GORHAM: We admit the Dominion Mill Company is a corporation.

MR. RYAN: We admit the Pacific Towboat Company is a corporation. Will you admit the employing of the Pacific Towboat Company by the Dominion Mill Company in this matter?

MR. GORHAM: We admit it in the Petition. If you will look at the end of the second paragraph of the Petition, you will see that is admitted in your pleading.

MR. RYAN: That is right.

MR. GORHAM: Will you admit there was 294,000 feet loaded on the scow?

MR. RYAN: Let it be stipulated that there was 294,228 feet of lumber loaded on the scow.

MR. GORHAM: Yes.

MR. RYAN: And the question of what was delivered at Port Blakely we will have to prove.

CLAIMANT'S TESTIMONY.

JOHN S. CLARK, a witness called on behalf of Claimant, being duly sworn, testified as follows:

BY MR. RYAN:

Q. Where do you reside?

A. Port Blakely.

Q. What is your business?

A. Lumber inspector.

Q. Did you inspect a scow of lumber, or cause the same to be inspected under your supervision, which was delivered on the scow *Claire* to the Dominion Mill Company at Port Blakely, Washington, on or about the 12th of December, 1918?

A. Yes sir.

Q. What quantity of lumber was on that scow at that time?

A. I could not tell you without looking over the file.

(Examines memoranda.) Between 40,000 and 50,000 feet, from the tally sheet that is on file.

MR. RYAN: In the other case the testimony was 46,220 feet.

MR. GORHAM: That is in another case.

Q. You say between forty and fifty thousand?

A. Yes, to the best of my recollection.

MR. GORHAM: We will consider whether we will require to produce the record, and let you know.

MR. RYAN: We will bring it if you desire it.

Q. You made no examination of the scow, did you, Mr. Clark?

A. No, not at the time.

Q. Did you make it later?

A. I saw it on the beach, after.

Q. What condition was the scow in when you examined it?

A. At the time I saw it it was on the beach; they were draining the water out of it; and the Jap held a lantern down through the hatchway and you could see the light shining through the crack.

Q. Where was this crack on the scow?

A. It was on the corner.

Q. How far from the top?

A. I think it was in the top seam.

Q. How large was the crack?

A. It was two or three feet long; I would not say how long. I know I shoved my ruler through it.

Q. You shoved a ruler through it?

A. Yes. It was night and I could not measure it.

Q. You tallied all of the lumber that was on the scow at the time it arrived at Port Blakely, or caused it to be tallied?

A. Yes sir.

Q. And you made memoranda of that at the time, did you?

A. Well, I turned the tally sheet into the office.

Q. And that is the tally sheet you refer to at this time?

A. Yes sir.

Q. Your recollection is that it was between forty and fifty thousand feet?

A. Yes sir.

Q. That was all the lumber that was left on the scow?

A. Yes, that was on it.

Q. Not to exceed fifty thousand feet?

A. No sir.

CROSS EXAMINATION.

BY MR. GORHAM:

Q. What time of day did you examine the scow—you say at night?

A. It was night time when I saw the scow on the beach?

Q. Did you discharge the scow yourself?

A. Yes sir.

Q. Under your supervision, I mean?

A. Yes sir.

Q. What date was that, do you know?

A. It was on Sunday. I don't know what day of the month. I think it was the following Sunday after the scow arrived at the mill?

Q. Did you see this open seam on the Sunday, or prior to the Sunday when you discharged her?

A. Oh no, after the scow had been beached; she was under water when discharged.

Q. Where was she made fast over there when she came in?

A. At the wharf.

Q. And you examined her after she had been discharged in the dock?

A. I did not examine her, I just noticed this one when they were draining the water out of her.

Q. Then you did not make an examination?

A. I did not make an examination, but I saw this.

Q. What you saw was an open seam on one end of the scow, was it?

A. Yes.

Q. How far from the top was it?

A. It was in the top seam.

Q. How far from the top of the scow on that side?

A. I should think about 14 or 15 inches.

Q. And it was only the one seam that was open, was it, that you saw?

A. That was the only one I saw.

Q. Was that seam open from the end of the scow and running to the other end? Or was it across the scow?

A. Ran lengthwise of the scow.

Q. Did you come around to look at the end of the scow to see where the seam was?

A. No.

Q. Or to see whether there was an opening there or not?

A. No.

Q. Did you see the name on the end of the scow?

A. Yes.

Q. And that was the end that was damaged, was it?

A. I could not say as to that.

Q. You said you saw the name?

A. I took the name of the scow after I had discharged her and put it on my tally sheet.

Q. You do not know what end the seam was in?

A. No.

Q. Did you go inside of the scow?

A. No sir.

BY MR. RYAN:

Q. You say before the lumber was discharged the deck of the scow was partly submerged.

A. Yes.

(Witness excused.)

STAFFORD WILSON, a witness called on behalf of claimant, being duly sworn, testified as follows:

BY MR. RYAN:

Q. Where do you live, Mr. Wilson?

A. Everett.

Q. What is your business?

A. Well, I do the construction work around the Canyon Mills, all the outside work mostly.

Q. You mean by the Canyon Mill, the Canyon Lumber Company?

A. Yes sir.

Q. How long have you been in that line of work?

A. Well, somewheres in the neighborhood of 12 or 13 years; may be a little more than that; I could not be certain of that.

Q. In your construction work you have charge of the construction of scows and barges?

A. Yes, what they have there.

Q. And were you in the employ of that company in the month of December, 1918?

A. Yes sir.

Q. Did you have charge of the repairing and taking care of the scow *Claire*?

A. Yes.

Q. How recently prior to the 18th of December had you done any repair work on this scow *Claire*?

A. Well, we repaired that scow along—I could not say definitely, but somewhere along—it might have been June or July, somewhere around there, we got through repairing that scow; it might have been a little later than that; I could not say exactly.

Q. Now we will come back to the repair that you did at that time later. Let me ask you now, at the time she was loaded with this cargo of lumber for the Dominion Mill Company, did you go over and examine her at that time, personally, yourself?

A. You mean the morning she left?

Q. Yes.

A. Yes sir.

Q. Before she was loaded?

A. No, she was loaded then.

Q. She was loaded then?

A. Yes.

Q. Did you, just before she was loaded, make any examination of her or do any repairs upon her at that time?

A. No sir.

Q. Now will you tell what repairs, or in what way she was repaired in the month of June or July, 1918?

A. Well, we had all the guard rails off her; and we recorked her and cemented the corks and painted her and put her in good shape.

Q. Did you do anything to the deck?

A. Yes, we patched the deck and put on what you might call a false deck; it was along the planks, put right on top of the other deck.

Q. How large a scow was that?

A. I think she is 34x120.

Q. And just tell something of her construction? How many compartments?

A. There is five gunnels; that is, two outside walls and three inside would make four channels in that scow and four hatches in each end.

Q. At the time of this repair was she made tight?

A. Yes sir, she was.

Q. How frequently after that repairing, what is the best of your judgment as to the number of times she was used for carrying cargo of any sort?

A. I could not really say, only she was carrying loads right along; she was in the service right along.

Q. And when she was loaded and put in service, it was your duty to inspect her and overlook her and examine her?

A. Yes, whenever any one told me something was wrong, I was the one that went down and attended to that.

MR. GORHAM: I move to strike the answer as not responsive to the question.

A. I attended to the repairs, yes.

Q. You kept her in repair from that on?

A. Yes sir; whatever was necessary.

Q. Do you know the carrying capacity, the approximate carrying capacity of that scow of lumber?

A. I guess she would carry around 300,000 feet, somewhere.

Q. On the morning of the 12th of December, she was loaded with this cargo of lumber for the Dominion Mill Company at the mill of the Canyon Lumber Company, was she?

A. Yes sir, I expect that is where she was going; I did not know at the time.

Q. It was this trip that she took where she lost part of her cargo?

A. Yes.

Q. And in what way was she placed for loading?

A. Well, they have a gridiron there that the scow sets on; they are piling driven in the ground, then sawed off and capped, and the scow sets on that; they are put every eight feet apart.

Q. And after she was loaded you made an examination of her?

A. There was one hatch off her and that morning I went down and put that new hatch on.

Q. Did you look in the gunnels to see whether or not she was leaking, taking water?

A. There was nothing wrong with the scow that I could see.

MR. GORHAM: I move to strike the answer as not responsive to the question.

Q. What other examination did you make of her at that time?

A. That was all, only I put the hatch on and seen that all the rest of the hatches were on.

Q. Did you look into the gunnels to see whether or not she was carrying any water at that time?

A. No sir, she had no water.

MR. GORHAM: I move to strike the answer as not responsive to the question. He was asked if he looked to see

any water and he does not say he looked.

A. I would say no. There was comparatively no water in her; she might have been damp; I could not say there was not any.

Q. Did you look in the hatches, in the gunnels? Do you recollect whether or not you did?

A. I could not say.

Q. What do you base your answer on that there was no water in the gunnels and she was comparatively dry?

A. Well, I looked in there, of course, when I was at the hatches.

Q. You gave this scow a general examination, the same as you give scows in sending them out of port?

MR. GORHAM: I object as leading.

A. Yes.

Q. I wish you would state again just what you did at this time in the way of looking over that scow when she was loaded with the cargo for this trip. You may detail over if necessary what you have already said: I wish you would contain it in one statement as best you can.

A. Well, the best I can remember, I went down there and fixed that hatch, put in a new hatch on the scow, and looked at all the rest of the hatches, and they were put on and everything was in proper shape as far as I could see; and as I put on these hatches and looked to see if they were right, I naturally looked in the scow to see and I know there was no water in that scow.

Q. Were you there when the Pacific Towboat Company's tug came to take the scow away with the load of lumber that was delivered at the mill to it.

A. Yes, the tug was there at that time.

Q. Did you watch her make fast to the scow?

A. No, I did not watch the tug make fast to the scow.

Q. Tell what, if anything, you next saw of the towing of the scow from the mill, after you made the examination and you saw them come up and take her away?

A. Well, I picked up my tools and I had some other work to do, I don't just remember what it was, and I started toward the mill, and when I got partly away a man said the scow was on the bank—

MR. GORHAM: I move to strike what some one else said.

MR. RYAN: That may be stricken.

Q. Did you see the scow there?

A. Yes.

Q. Go ahead and tell what you saw.

A. I stopped and looked at the scow.

Q. Where was she?

A. She was on the bank of the river, up against the bank of the river.

Q. And she was then in tow of this tug boat *Defender*?

A. I could not say whether that was the name of it or not.

Q. Well, it was the Pacific Tugboat Company's tug, was it?

A. I think it was.

Q. You saw her upon the bank?

MR. GORHAM: He did not say that.

A. I saw her against the bank.

Q. Was she moving at the time or being moved?

A. Well, she was moving— I don't know whether she was moving with the current or with the tug; it seemed to be mixed up in some way.

Q. And how long were they there on the bank?

MR. GORHAM: He has not testified she was on the bank; he stated she was against the bank. He declined to say she was on the bank.

Q. How long was she there?

A. I could not say how long. I just looked a few minutes. I could not state how long she was. I turned and went to my work. That is all I remember about it.

Q. Did you see her again after that, on this trip, before she got out of the river?

A. No sir, I did not.

Q. Where is this mill located, on the river?

A. On the Snohomish.

Q. And how far was it from there to the mouth of the river where it empties into the waters of Puget Sound?

A. It is hard to judge water. I don't know what estimate I really should put on that.

Q. You need not estimate it, we will have some one else testify about that. Will you describe the shape and length of the channel to the mill?

MR. GORHAM: If he knows.

Q. I assume you do know the form of that channel down to the mouth of the river?

A. Well, the river runs, I should judge, in a kind of a— it would not be quite north and south, but it is almost, right at the Canyon mill, of the main channel; it runs down with a kind of a swing; and Steamboat Slough runs on down this

way, and leaves a kind of a bend in there; that is where the scow went down there, Steamboat Slough.

Q. The scow did not go down the main channel?

A. No.

Q. Went down what is called Steamboat Slough?

A. Yes.

Q. Could you illustrate that by a drawing?

A. Nothing more than I have told you; you have to have the directions.

Q. Is there a bend in the slough there of that channel, where this tug went down?

A. Yes sir, down quite a ways below.

Q. How much of a bend, or how far below the mill is it?

A. I would say that bend was a mile; I don't know that.

Q. Where was it this scow was put on the bank?

A. I mean the bend where the scow goes out of sight from the mill.

Q. Then you could see the scow and the tug how far distant from the mill?

A. I should judge a quarter of a mile where I seen her ashore there.

Q. It was a quarter of a mile from you, the mill, where you saw her?

A. I should judge about a quarter of a mile.

Q. Did you see the scow after she was returned from this voyage to the Canyon Lumber Company, and make an examination of her?

A. Yes sir.

Q. Did you make repairs on her at that time?

A. Yes, we fixed her.

Q. Tell what condition you found the scow in on her return from the mill?

A. Well, she had a crack opened up in front in the corner, in one of the corners.

Q. What was the width of that and the length, approximately?

A. I should judge it was opened up about ten feet and the width was three or four inches opened when she came back.

Q. Just an opening in a seam so as to make a seam in the scow or was there any bruising of timbers in there that showed evidence of having been split or broken?

A. No, it was in the corking where the opening was.

Q. How far from the top of the scow was this?

A. About 15 inches, probably.

Q. When this scow was loaded with lumber, was the load extended over the sides of the scow any?

A. No sir.

Q. And was it made fast on the scow, tied down properly?

A. Well, they put cross-ties on there when they load the loads, and it was tied properly—supposed to be, and properly loaded.

CROSS EXAMINATION.

BY MR. GORHAM:

Q. Are you a seafaring man, Mr. Wilson?

A. No sir.

Q. Did you ever go to sea?

A. No sir.

Q. Have you ever worked in a shipyard?

A. Some, yes.

Q. Whereabouts?

A. I have done some work back in the east.

Q. When?

A. Oh, may be 20 years ago.

Q. Whereabouts in the east?

A. Green Bay.

Q. Long Island Sound?

A. No sir.

Q. Green Bay, Wisconsin?

A. Yes.

Q. What character of vessels?

A. Well, it was not—I did not work there very long.

Q. How long?

A. Oh, may be three or four months.

Q. What did you do?

A. I just worked around at common work.

Q. You do not consider yourself a ship builder?

A. No sir, I don't hang my face out for a ship builder.

Q. You do not pretend to be an expert on construction of seagoing craft, do you?

A. I don't know just how to answer that, that is quite wide.

Q. I want your answer. I ask you if you consider yourself an expert as to the structure of seagoing craft?

A. No sir.

Q. You repaired this scow in July of that year?

A. Well, somewheres around in July.

Q. She was repaired in the summer some time and thoroughly overhauled?

A. Yes sir, she was well fixed up.

Q. Had she opened any seams at that time, before you repaired her? Any seams open?

A. Not any more than in a scow than would be if they needed repairing.

Q. I did not ask you as compared with other scows. I ask you if at the time you made the overhauling in the summer of 1918, her seams were open?

A. No.

Q. They were not?

A. No, not opened any more than she needed repairing.

Q. Well, will you tell the Court what you mean by that answer?

A. I don't really understand the question.

Q. All right, I will straighten it out. I don't want to mislead you.

A. I want to answer all right.

Q. When you overhauled that scow in the summer of 1918, what were the conditions of her seams?

A. Well, she needed recorking, some of them.

Q. Whereabouts?

A. Well, in the cracks.

Q. Well, how wide were these cracks? What was the widest of the cracks you saw in the summer of 1918?

A. Well, these cracks would be on the outside and some of them a half inch and some less than that.

Q. And some a little more?

A. Well, might be. But they would not be going clean through the scow.

Q. No. She had a name on her stern, did she?

A. I do not know which end you call the stern.

Q. We will assume she had a name on one end, and we will call that the stern. Did she have any names on her side?

A. Yes sir.

Q. Whereabouts, at the other end from the stern?

A. Yes; she had a name on the one end—I would not call it front, I don't know which is front; but on one end then there is a name on each corner here.

Q. On the other end of the scow?

A. On the other end of the scow.

Q. Now do you know how she lay on the gridiron the morning the *Defender* towed her out? Was she laying with the end on which her name was written down stream or up stream?

A. I could not say.

Q. You don't know. Now you say that day she was towed you only put one hatch on?

A. I put a new hatch on.

Q. Did you batten down all the other hatches?

A. Some of them were down.

Q. And others what?

A. Some were up, when they load they sometimes pull a hatch off to let the air get into the scow.

Q. Whose duty would it be to see that these hatches were properly corked or made tight?

MR. RYAN: I object.

MR. GORHAM: I want to find out who is responsible for doing it.

MR. RYAN: I will not object, if the witness knows.

A. I think Mr. Neimayer is the one. He took the responsibility to see that these hatches were right, and then if there was anything to do, I am called on to correct these hatches.

Q. The work is yours and the inspection and responsibility is his?

A. Not altogether.

Q. How much is his and how much is yours?

A. He loads the scow and he generally inspects them and sees if there was anything in there or whether anything was going wrong, or any leaks; why then I am notified.

Q. Now you say that you put on one of these hatches and battened it down. Did you cork it?

A. Yes.

Q. Which end of the vessel was that on, the down stream end or the up stream end?

A. That was the upstream end.

Q. Right underneath the bunkers or chute where the lumber comes down?

A. No sir, the chute was the down stream end.

Q. You are sure?

A. I have been long enough there; when the tide water runs out it runs out that way.

Q. I am not trying to mislead you, but you are mistaken about that, that is all. I will show you a photograph which I will ask to have marked for identification.

Photograph marked Petitioner's Identification A.

A. The chute is not there.

Q. Now, as a matter of fact, that photograph was taken last month. The chute is not there; the chute is up stream, is it not?

A. Yes.

Q. Was it not up stream in 1918, in the same place?

A. It must be, it never was moved.

Q. Now, which end of that scow, and this is a photograph of the scow *Claire*, as we will show hereafter, which end of that scow, the up stream or the down stream end,

did you put the hatch on?

A. The up stream end.

Q. And it was underneath the chute, was it not?

A. No sir.

Q. There was not any chute there?

A. Yes sir, the chute was there.

Q. The chute was on the up stream or down stream end of the scow?

A. The down stream end as I remember, the scow was on the upper end of the chute.

Q. Is that chute a movable chute?

A. No sir, it is a permanent chute, this part of it; it can be raised up or down.

Q. It has not been moved for the last two years?

A. Not any more than some repairing done to it.

Q. How high was the lumber above the hatch that you put down and made fast?

A. Well, high enough so that I could get in there to the hatches; I don't know exactly.

Q. That is very indefinite. The Court might think you were standing up?

A. A couple of feet.

Q. What is the dimensions of that hatch?

A. Well, I should judge these hatches on the *Claire* was about 20x23.

Q. And was that hatch you battened down a hatch on the side of the scow or in the middle of the scow or at the end?

A. It was on the top of the scow, on the end.

Q. Was it on the side or was it in the middle?

A. If I remember exactly right, I think it was the second hatch from the river side of the scow.

Q. But you don't remember?

A. Not exactly, no.

Q. Your memory is not very good about it? That is, you did not make any attempt to make any vivid impression at the time?

A. No sir.

Q. Now, you say the bend is about a mile down the river from the mill, the bend in Steamboat Slough, where the vessels go out of sight?

A. May be more or less. I would not say definitely.

Q. And that you think the vessel went up against the bank about a quarter of a mile from the mill?

A. Somewheres in that neighborhood.

Q. Now you testified at a former trial involving these same questions between the Dominion Mill Company and the Canyon Lumber Company, that the front end of the

scow hit the bank?

A. Well, I might have said the front end.

Q. That is the way it was headed?

A. Yes.

Q. But you did not know how she was headed, with respect to this name on her stern, did you?

A. No sir. I don't think I testified about her stern end or her name.

Q. Did she strike on the right hand bank of the river or left hand bank of the river?

A. Right hand bank as I remember.

Q. She was going down stream?

A. Yes.

Q. And the tug was between you and the scow, was it?

A. Well, I could not say whether the—which end the tug was on, or whether she was on the side at that time. I know they were maneuvering there at that time.

Q. At the time you stopped and looked at this maneuvering and saw this vessel up against the bank, cannot you state whether or not the tug was between you and the scow?

A. No sir, I could not just say now.

Q. How long did you watch there?

A. Oh, probably three or four minutes; may be not that long. I did not stop very long, because I had other work to do.

Q. It was not your business, was it?

A. No sir.

Q. Had she already come up against the bank when you saw it or was she just approaching the bank?

A. I think she was against the bank.

Q. Did she seem to be in any distress?

A. I could not say.

Q. Did you examine all the hatches to see whether they were properly corked, or was that Neimayer's business?

A. I looked around the hatches there.

Q. Before she went out that morning?

A. Yes sir.

Q. After she was loaded with lumber that morning?

A. Yes sir.

Q. They were all properly corked?

A. To the best that I remember now they were all right, everything was O. K. on the scow.

Q. How long had that corking been in?

A. In the hatches?

Q. Yes.

A. Well, the corking sometimes is put in—I don't know, I could not state positively the length of time that corking was in; sometimes they take the hatches off, you see.

Q. The hatches set down inside the coaming, did they not?

A. Yes.

Q. And each one of the hatches of the vessel were on?

A. Each hatch was all right.

Q. Now what was the condition of the vessel when she came back after going down the river that morning, when she next came back to your mill, what was her condition?

A. Well, one end of her was all cracked in.

Q. Now how far did that crack run from the corner?

A. You mean from the end of the scow back?

Q. Yes.

A. I should judge ten feet.

Q. And that was the crack you refer to heretofore about 15 or 18 inches below the deck?

A. Yes, somewheres in that neighborhood.

Q. Do you remember a split inside?

A. Some timbers split inside.

Q. What is the diameter of that split inside?

A. Well, there was one of the gunnels in there—here was the corner sets this way; you see the deck is in that course over these walls, you can call them walls.

Q. These gunnels or walls come from the bottom to the top?

A. Yes, the bottom nailed on the bottom and on top from the deck, and they spike them right down into that gunnel, along this top gunnel. And I think the first one inside there was a timber split about 30 to 40 feet back.

Q. At which end of the scow?

A. On the same end this opening was on the outside.

Q. The same end where the open seam was. And which gunnel was it, the gunnel on the outside of the scow or the first gunnel inside?

A. The first next to the outside, I think it was.

Q. You are positive there was a split in the timber 30 or 40 feet?

A. Yes, a new split.

Q. Have you ever examined it since that time, since she came back?

A. Since that time?

Q. When she came back and you found that split, have you examined her again?

A. I don't know that I have. I fixed her up after that time when she came home.

Q. Did you put new timbers in?

A. No sir.

Q. That split timber is in there?

A. That split timber is in there. We drove more spikes

through the deck down into it at that place.

Q. And the split timber as you say still remains on that scow?

A. Yes.

Q. You are sure about that, are you?

A. Yes. Spikes were driven down from the deck of the scow. And this split, you see, run along and kind of came in a wedge fashion off.

Q. Was it split from driving drift bolts through?

A. No sir. It was the spikes from the top, I suppose there was some strain or something; that is what I think.

Q. You don't know that?

A. That would be the only way it could be done, some strain. And these spikes would naturally on one half of the wall. would split the timber.

Q. Thirty or forty feet?

A. I should judge 30 or 40 feet.

Q. Now when she came back and was repaired, and you saw this open seam on the outside, and this split of the gunnel on the inside of the end of the scow that had the open seam, was that the end that had the name on the stern of the vessel, across the end of the vessel?

A. Yes. I would say the scow would set up-river like that, and the name would be on this end, and that split end was right here, on the right hand corner looking up-river.

Q. Right hand corner looking up-river, but the lower river end of the scow?

A. You and I have certainly got that river mixed up.

Q. What is the condition of the scow, as compared to her condition when she came back to you and you overhauled her, after December, 1918?

A. Well. I would consider she was in fair condition now because they are loading her right now.

Q. And she is practically in the same condition she was so far as her construction?

A. I guess she is practically that way right now.

Q. She is practically in the same condition, as far as her structure is concerned, as she was after you overhauled her in December, 1918?

A. As compared with the—

Q. I say, is the structure of that vessel now about the same as it was after you overhauled her after Port Blakely?

A. I would not want to say that, because that is about three years ago and the wear and tear of the scow would make some difference after repairing her.

Q. But it would be just the ordinary wear and tear?

A. Yes.

Q. Nothing has happened to the scow since that voy-

age, when you say you saw her up against the bank, that would cause any injury to her structure in any way?

A. Nothing that I know of.

Q. You do not know anything about her position at Port Blakely, or what they did with her, or how she lay on the beach?

A. No sir.

Q. You don't know anything about that at all?

A. No sir.

Q. You would not say but what the way they handled her at Port Blakely might have been the cause of the condition as you saw her when she came back, as far as your personal knowledge goes?

A. No, I would not say anything about that.

Q. You haven't any personal knowledge about it one way or the other?

A. No sir.

Q. Have not any personal knowledge that the injury you saw there had to the fact that she went up against the bank? You haven't any personal knowledge of that?

A. No sir.

REDIRECT EXAMINATION.

BY MR. RYAN:

Q. You were asked whether you were an experienced shipbuilder. You did not pretend to be an experienced shipbuilder?

A. No sir.

Q. But you do know how to construct scows?

A. Yes.

Q. Have been building them for 13 or 14 years?

A. Yes, I helped to build these scows.

Q. On scows used for carrying lumber, is there any bow or stern?

A. Not that I ever heard about.

Q. You never heard of that. And regardless of where the name may be, she may be towed one time with the name forward and the next time aft?

A. Yes, I think it depends all on the loading of the scow.

Q. Do you know which end, with reference to where the name was placed on the scow, was headed down river when she was towed away by the tug *Defender* of the Pacific Tow Boat Company, that this cargo of lumber was on?

A. No sir, I could not say.

Q. You did not notice that?

A. No sir.

Q. And, in your opinion, what was the cause of opening or break of this scow at that point?

MR. GORHAM: I do not see how he can answer that. He did not say on cross examination that he had any personal knowledge as to whether it was done at the bank or whether it was done at Port Blakely.

Q. Well, what would cause an opening in a scow, such as you discovered on her after her return? In your opinion what would cause that?

A. Well, there might be a good many causes. If she got on a bar or was heavily jammed into something, with a heavy load on. I don't know; quite a few things.

Q. A jar, coming in contact with something solid with a heavy load on. Now when she was taken from the mill she had a heavy load on, didn't she?

A. I don't know whether she was loaded to capacity or not.

Q. Whether or not to capacity you would consider it a heavy load?

A. Quite a load.

Q. A load of the capacity such as you have referred to, when you say she would have a heavy load on and came in contact with something else?

A. Yes, I would say so.

Q. Such coming in contact with something solid would be the same as coming in contact with a bank of the river?

MR. GORHAM: I object as leading. Let the witness testify.

Q. Would a bank of a river, such as was there when you saw this scow after she started, when she was being towed from the mill, would that be what you would consider something solid?

A. Yes sir, I suppose it would be solid enough.

Q. In your opinion could that seam have been opened up, or could the timber in the gunnel of which you speak have been opened up, by the wash of the sea?

MR. GORHAM: I object. He is not a seafaring man. It is incompetent.

Q. In your opinion?

A. In my opinion I would say no.

BY. MR. GORHAM:

Q. This is a mud bank down there, is it not?

A. Well, I don't know exactly what it is.

Q. Have you ever been down there?

A. I haven't been down on the bank there, no sir.

Q. Don't you know that the Snohomish River is all mud bank, and all its deltas, and have been coming down there for thousands and thousands of years, the alluvial deposits?

A. I know it has soft places; I don't know how it is there.

Q. You do not know that it is not soft there, do you?

A. No sir.

BY MR. RYAN:

Q. You do know that there is a great deal of drift wood drifts in along the banks?

A. Yes, lots of driftwood comes down there.

Q. Do you know whether or not at that time it was filled with drift?

A. I could not say.

BY MR. GORHAM:

Q. What was the stage of the water?

A. It must have been high tide, because they do not move scows as a general rule before they get the tide.

(Witness excused.)

PERCY AMES, a witness called on behalf of Claimant, being duly sworn, testified as follows:

BY MR. RYAN:

Q. Where do you live?

A. Everett.

Q. What is your business?

A. Canyon Lumber Company.

Q. You are one of the proprietors of the Canyon Lumber Company?

A. No sir.

Q. You are an employee?

A. Yes.

Q. You were in their employ in December, 1918?

A. Yes sir.

Q. In what capacity?

A. In charge of the boom and log scaling.

Q. Did you have anything to do with the loading of the scow *Claire* on or about December 12th?

A. No sir.

Q. Did you examine her in any way at that time?

A. I don't think I did.

Q. Did you see her when she was being towed away from the mill?

A. Yes.

Q. Did you observe which end of the wharf, where the name is on the scow, whether that was headed down stream.

A. No, I could not say.

Q. What, if anything, did you observe when she was being towed away from the mill by the tug *Defender*?

A. I saw the scow at the bank.

Q. Did you see it go into the bank?

A. I saw them when they ran up to the bank.

Q. How far distant was that from the mill?

A. It is hard to guess, but I should think it was close to a quarter of a mile; it might be less.

Q. What route did she take on leaving the mill?

A. Steamboat Slough.

Q. Did you observe how she was made fast to the scow, whether she was being towed or made fast alongside?

A. Alongside.

Q. And on which side was she being towed by the tug, if you remember?

A. I do not remember that.

Q. But the side where she was would put which of them against the bank?

A. The scow.

Q. How long did you stay there? Until they had her released from the bank?

A. Yes.

Q. How long was she there at the bank?

A. Oh, she might have been a minute or half a minute, hard to remember. I cannot remember that. I know they just swung around to the bank and went down the river.

Q. You did see her go against the bank?

A. Yes sir.

Q. Did you notice whether or not the tug stopped and swung with the current when she hit the bank?

A. The tug stopped?

Q. Yes, stopped its momentum and swung with the current and went into the bank?

A. Just at that time he was stopped.

Q. Will you tell the Commissioner, Mr. Ames, all that you saw of this?

A. He was practically in, really broadside, he was two thirds broadside to the river when he touched the bank; after he touched the bank he got right around, he did not stop any more than to square himself in the river and go again.

Q. Do you know what the condition of the bank of the river was at that time, with reference to there being wood in there?

A. It was high water; the tide had just started to ebb, just ebbing.

Q. Did you see the scow when she was returned to the mill?

A. Yes, I saw it.

Q. Did you examine her yourself?

A. Yes, I saw the crack in her.

Q. Just tell us what you saw?

A. I cannot remember exactly. I know there was a raised deck for a number of feet; just how far I could not tell.

Q. Was that opening in her something that would be plainly visible from outside of the scow?

A. Well, it would, if you were down low enough to look at it. We could see the scow was raised up. I don't think we could see the crack unless on the same level with the scow.

CROSS EXAMINATION.

BY MR. GORHAM:

Q. I show you a photograph which I will ask to have marked Petitioner's Exhibit B, and ask you if you recognize that?

A. Yes.

Q. That was taken the other day down at Everett?

A. Yes.

Q. That is a view of the river, of Steamboat Slough of the Snohomish River, from the Canyon Mill, is it not?

A. Yes.

Q. Does that disclose the place where the scow went against the bank?

A. Yes sir.

Q. I will ask you now with reference to that little shed on the right hand side of the picture. Can you tell from the position of that shed, whether or not that photograph takes in sufficient scope of the river to include the place where the scow came against the bank?

A. Yes sir, it does.

Q. I show you another photograph which has been marked C for identification, and call your attention to the arrow pointing downward, and ask you if you recognize that scene?

A. Yes sir.

Q. And the arrow points to the place where the scow came against the bank?

A. Yes.

Q. What is the nature of that bank along there, soft mud?

A. Yes, it is all muddy soil.

Q. It is alluvial deposit, is it not?

A. Yes.

Q. I show you a photograph which has been marked D for identification, of the scow *Claire*, taken at the same time these other photographs were taken. Do you recognize it?

A. Yes sir.

Q. The bow of the scow in the foreground is the end of the scow that you saw subsequently in a damaged condition, the seam opened, and that is the end that has the name of the scow on it? Is that right?

A. Yes.

Q. Now do you see evidence of cement being put in there at that corner, some two feet below there, two feet below the deck of the scow?

A. I can see something there.

Q. Did you see that end of the scow the other day, so that you could tell whether that was cement or not?

A. Well, there is cement on one end, but I cannot tell on what end of the scow it is on.

Q. On the end that was injured at the time this vessel went over to Port Blakely and came back?

A. I would not say about that either. I cannot remember that part of it.

REDIRECT EXAMINATION.

BY MR. RYAN:

Q. You do not know whether the condition of the scow, as shown by Exhibit D—you do not know whether that is in the same condition it was two years ago, do you, when this accident happened?

A. Well, you mean that cement showing?

Q. Yes.

A. I would not say.

Q. You don't know?

A. I cannot remember that.

BY MR. GORHAM:

Q. Who would put that cement on there, if anybody? Whose duty would it be?

A. Mr. Wilson, I think.

MR. GORHAM: We will ask to have Mr. Wilson remain in Court here in order that we may recall him.

MR. RYAN: I will recall him now.

(Witness excused.)

STAFFORD WILSON, recalled for Claimant for further

DIRECT EXAMINATION.

BY MR. RYAN:

Q. I call your attention to libellant's Exhibit D for identification, and ask if you recognize that as being a photograph recently taken of this scow in question?

A. Yes sir, that is the scow.

Q. Now can you tell from that photograph, can you now tell where this opening was in the scow at the time she was returned, or are you sure you know where it was?

A. Yes, I am positive where it was.

Q. Will you indicate on this petitioner's Exhibit D where the opening in the scow was when she was returned?

A. There is a crack right up in there. I will put a mark there.

Q. You may mark on this Petitioner's Exhibit D with this red ink just where that crack was, according to your best judgment, on this scow, when she was returned to the mill after her trip to Port Blakely?

A. Yes sir, there is the crack right there.

Q. I will mark that for you with an arrow to indicate where the crack is underneath there.

A. Yes.

Q. Is that where the crack was?

A. That is where the opening was when she came back.

Q. And how long in distance?

A. I should judge about 10 feet from this corner back here.

BY MR. GORHAM:

Q. From the end of the scow toward the other end?

A. Yes.

BY MR. RYAN:

Q. There has been some comment here by counsel in calling the attention of a witness to what appears to be some cement put in the corner. Is there any cement or anything appearing on the scow there?

A. Yes, there is some cement on that corner, I think. That has not been on a great while. At the time we repaired that scow that cement was not there.

Q. Then in that respect the scow is not in the same condition she was when it was loaded with this cargo of lumber?

A. Oh no. You can see this part of the guard rail off here. This corner is loose. That is why I tried to make that

plain to the attorney. I did not want to answer it just as he put it.

Q. So that she has had over two years of use since that time, has she?

A. Yes.

Q. And her condition is not in all respects as it was at the time she carried this cargo of lumber?

A. No.

Q. Could you indicate by a mark on the deck of the scow approximately where the timber part of the gunnel was split?

MR. GORHAM: That is below deck.

Q. Indicate on the deck, if you can, where it was.

A. I cannot see very well without my glasses. The first gunnel was right there between these two hatches. There is a hatch and there is a hatch; and there is one hatch closed, and there is one, two, three, four hatches. The first gunnel from this outside would be just between these two.

Q. (Counsel indicates in exhibit points where hatches 1, 2, 3, 4, were located.) Where was the gunnel timber located with reference to hatches 1, 2, 3, and 4 on Petitioner's Exhibit D?

A. Between one and two.

Q. I will mark on there G. T., meaning gunnel timber. Now you say it was at that point, and the timber was extending back about how far?

A. Well, about 30 or 40 feet; at any rate to the very end of the scow, it started back a little bit, as near as I can remember, that is the gunnel as I said in my testimony.

Q. I believe I asked you before, but to be sure, do you know which end of the scow was headed down stream?

A. No sir.

Q. Can you tell which part of the scow went against the bank from where it is now?

A. No sir.

CROSS EXAMINATION.

BY MR. GORHAM:

Q. You say cement was put on there since the vessel came from Blakely?

A. I do not think there was any cement on the scow at that time like that. There was a guard rail off that corner, and that is why that shows. At least this picture shows that the guard rail is off, the piece that comes up from the bottom.

Q. What would be the occasion for having that cement on?

A. We always cork and put cement on.

Q. Did you put cement on the other corner?

A. Well, if it is necessary, yes.

Q. But what made this cement necessary?

A. It might have rubbed against the pile there some-time. And to make this better we put on the cement before we put on that next piece up from there. There would not be any reason why it would not be solid as any other place.

Q. Is it not a matter of fact the cement was put on there because the timbers were rotten?

A. No sir.

Q. Are not these timbers rotten underneath that cement?

A. No sir.

Q. You are sure of that.

A. I am sure of that; not at that time.

Q. When the cement was put on?

A. No sir.

Q. That cement is a considerable distance below the place where this seam was, was it not?

A. Yes sir, according to the pictures, it is down some.

BY MR. RYAN:

Q. This cement makes it water tight wherever it is properly applied?

A. Not so much that as covering the oakum so that the oakum will not take water so bad and have friction.

Q. The cement serves to make the scow more seaworthy?

A. Yes.

BY MR. GORHAM:

Q. Cement is put in there to protect the corking if there is a small strip put in, but when spread over as indicated by that photograph, then it is for some other purpose, and is not just to protect the oakum in there?

A. If I could explain to you sometimes that is done, but I would have to go back to a different thing and I don't suppose you would let me tell that.

MR. RYAN: Explain any way you want to.

Q. You can explain from your personal experience.

A. My own personal experience, we have had scows just down in the bay there and in a storm and was tied up and rubbed up against the dolphin, and there was no rotten timbers or anything, simply rubbing there, something like that there may be, and we might just to cover that up to

protect the oakum, we put on cement, but it is not in there deep.

Q. You mean generally speaking it is not in there deep? You are not referring to the photograph now. You don't know how deep that is in the photograph, do you?

A. Well, I don't know just how deep it goes in that photograph.

Q. You don't know how deep actually it is in the vessel today?

A. I am positive it is not deep.

Q. Do you know how deep it is in that vessel?

A. No, I would not state any depth.

(Witness excused.)

W. C. NIEMEYER, a witness called for Claimant, being duly sworn, testified as follows:

BY MR. RYAN:

Q. Where do you live?

A. Everett.

Q. What is your business?

A. Lumber inspector.

Q. Who are you employed by?

A. Employed by the Inspection Bureau, Seattle, but placed with the Canyon Lumber Company.

Q. How long have you been engaged in that line of work?

A. Fourteen years.

Q. What are your duties as lumber inspector?

A. Inspect and tally lumber.

Q. Do you have anything to do with the loading of scows for the Canyon Lumber Company?

A. Yes, I have. I look after all the loading of scows there.

Q. How long have you been engaged in that line of work?

A. 12 years.

Q. You were also employed there in the month of December, 1918, were you?

A. I was.

Q. What did you have to do with the loading of the scow *Claire* on or about December 12th, 1918, with a cargo of lumber to be taken by the Dominion Mill Company at Port Blakely?

A. I loaded her.

Q. And did you examine the scow before she was loaded?

A. I did.

Q. Just tell what examination you made and what was the results of that examination?

A. Well, when a scow came, the first thing we do is to go down and look at them and drain them and see they are all right before we load them.

Q. You did that with this particular scow, did you?

A. I did.

Q. You made a complete examination of her?

A. I examined her and saw that she was seaworthy to take that trip to Blakely.

Q. Were there any openings in her sides?

A. There was not anything there that I could see, you know. There was no water. I drained all the water when she came in on the trip; because sometimes there are two or three inches in scows and sometimes may be more than that, four or five.

Q. How were the hatches?

A. The hatches were all on and corked.

Q. Did you notice, when she was loaded, with reference to the name of the scow, which end was headed down stream?

A. I did not. I would not pay attention to that, on account of both ends being the same. They come in one end one time, and the next time they take them out, the other. Which ever is down; we try to get a rake of three or four inches to tow, one end a little higher than the other, so that it would be better for the tow boat company.

Q. Down by the head or stern as she laid?

A. There is no such thing as head or stern. We load them which ever way they come in.

Q. As it happens?

A. And he will hook on to what I would call the light end, have that in front.

Q. Now I want this clearly in the record, Mr. Niemeyer. Is there any stern or bow to that scow?

A. I would say no.

MR. GORHAM: I object as incompetent. He is not qualified as a seafaring man or shipbuilder. He don't know anything about it, simply his opinion as a tallyman.

Q. You have seen this scow in use from the Canyon Lumber Company for some time?

A. For the last 12 years.

Q. And is there any fixed way of her being towed, that is, could she be towed from either end?

A. Yes, either, does not make any difference.

Q. And had been so used during the entire period of time she had been there?

A. Absolutely.

Q. Do you know whether or not this tow boat company had ever towed this scow before?

A. I could not say. I don't believe they ever had.

Q. Do you know when she had been repaired or overhauled?

A. I would say some time along in June or July.

Q. Did you observe what that overhauling consisted of?

A. Well, I was right close where I could see it. They recorked her; recorked the deck; patched them and put a false deck on top, to protect the other deck.

Q. What was her condition then after this overhauling?

A. She was absolutely seaworthy.

MR. GORHAM: I move to strike that as incompetent. This witness is not qualified as an expert.

Q. What do you mean in your own language, by being seaworthy.

A. I mean she did not leak; it was not in a leaky condition.

Q. And she had been used continually after that, had she?

A. Yes.

Q. For what purpose.

A. Towing lumber.

Q. The same as used at this particular time?

A. Yes.

Q. Do you know any other towboat companies that had towed her in the intervening time?

A. Yes, the American Towboat Company. I would not say that they had towed her between that time, but then they towed her lots of times. And Mr. Oliver there, with his launch, he has towed her many times.

Q. Were you there when they hooked on to her?

A. No sir.

Q. Did you see anything of her after she was finished loading?

A. No sir. I finished loading that morning and left, if I remember correctly, for Seattle.

Q. When did you next see the scow?

A. When she returned from Port Blakely.

Q. What condition did you find her in?

A. I found her at that time—there was a break in the end, the header lifted up.

Q. What do you mean by the header lifted up?

A. I think a 14x16, what we call a header on the scow, that is on the front end. That was lifted up on this front

where the cargo is, and around on the end, ten or twelve feet on the side and on the end.

Q. A distance of 10 or 12 feet on the side?

A. Yes.

Q. What distance on the end?

A. I would not say.

Q. Your best judgment?

A. Six or eight feet.

Q. Now, inside of the scow, what damage did you observe? Were you down in her?

A. Well, I noticed one of the bulkheads was lifted up also; what we call a gunnel running through the scow.

Q. Was that broken?

A. I would not say broken, but split. It was lifted up, went with the others. I did not notice whether broken. It was lifted up for 20 or 30 feet, something like that.

Q. You have during your 12 years time had occasion to examine these scows that have been used for towing cargoes to and from the mill?

A. I examine all that comes in there and see that they are seaworthy.

Q. And this change then that you noticed in the scow that you have testified to at the time she was taken and when she was returned?

A. Yes.

Q. In your experience and examination of these scows, after they have been used for the purpose of towing cargoes as in this instance, in your opinion could that damage have been done to the scow by the ordinary wash of the sea that you might meet on Puget Sound?

MR. GORHAM: I object. He is not qualified as a seafaring man.

Q. In your opinion what could have caused that damage to this scow?

MR. GORHAM: I make the same objection.

A. It seems to me it came in contact with something to raise that header up.

Q. Something, by which you mean something solid? Some solid substance?

A. Yes.

Q. For instance what, for example, in towing she would have to come in contact with what?

A. Come in contact with logs or stump or bank; anything solid so that she would raise it up.

Q. Was the opening which you saw in there, could that be plainly seen from the outside of the scow?

A. If you were down on a level with it you could see it.

Q. And how heavily was she loaded? Did she have a capacity load on at this time? How far above the water's edge would her deck be?

A. I would say about 18 inches.

Q. And if that opening had been in the scow at the time she was loaded with this cargo, the crack which you observed there when she was returned, could be plainly seen on inspection?

A. While being loaded, you mean.

Q. Yes.

A. Well, if you got down and looked; that is the only way you could see it. You would have to lay over the end of it. I would not say you could see it plainly.

Q. When a scow is loaded it is not loaded clear back?

A. No sir.

Q. There is sufficient room to lie down and look and make an inspection underneath?

A. Yes sir.

Q. What is the condition of the river there as to there being any sea at that point?

A. There is no sea.

Q. None until you get to the mouth of the river?

A. No sir.

Q. Where does the river empty, into what waters?

A. Port Gardner Bay.

Q. What is the name of the channel that leads from the location of the mill down the river?

A. Steamboat Slough and the main river.

Q. Both of these channels are navigable, are they?

A. Yes.

Q. Which one did this scow go out?

A. I do not recall; I was not there.

CROSS EXAMINATION.

BY MR. GORHAM:

Q. You were a witness in the case involving the loss of the cargo of this scow at this voyage, at Port Orchard, in a suit between the Canyon Lumber Co. and the Dominion Mill Company?

A. Yes.

Q. You testified there that you found the top of the 6x12 bulkhead was split 30 or 40 feet straight down. Is that correct?

A. I don't remember whether I did or not.

Q. I call your attention to the questions and answers:

“Q. Did you examine the inside of the scow?” A. I did.”
Was that testimony given?

A. That is a year ago. If you have the records there—

Q. “Q. Did you find anything, was your attention directed to any particular condition of the bulkhead? A. Yes.” Do you remember that?

A. I don’t remember these records.

Q. I am going to ask you each question and you can answer.

A. I cannot answer anything there. I answer what comes up now.

Q. I want to know if you remember this—

A. I don’t remember it.

Q. “Q. Which one? A. The bulkhead on the right side.” Do you remember that?

A. I don’t remember any of this. I cannot remember what I testified.

Q. The next question, “Q. The first bulkhead adjoining on the side which you found the crack? A. Yes sir.” Do you remember that question and answer?

A. I don’t remember that.

Q. Next question, “Q. In what condition did you find that bulkhead? A. The top 6x12 split 30 to 40 feet straight down.” Do you remember that?

A. I don’t remember that.

Q. The next question, “Q. Was that a split in the timber itself? A. Yes sir.” Do you remember that question and answer?

A. Do I have to answer this?

Q. Yes.

A. I cannot recollect what I testified to.

Q. That is very reasonable to suppose, very few of us can, but I am drawing it out. The next question, “Q. Was that a split in the timber itself? A. Yes sir. Q. Was that a fresh split or an old split? A. It was a fresh split.” Do you remember these questions and answers?

A. I do not.

Q. Now is it a fact that this first bulkhead joining the side on which you found the crack was split in the timber itself 30 or 40 feet?

A. Well, I don’t know whether it was in the timber itself. It was raised up. What I would call a crack would be an opening. I cannot say it was split.

Q. Cannot you say it was not split? Don’t you know it was not split?

A. No, I don’t.

Q. Have not you examined it recently?

A. That has nothing to do with it.

Q. Have not you examined it recently?

A. No sir.

Q. Did not you examine it with McNealy the first part of this month? Yes or no?

A. No sir, I didn't examine it.

Q. Did not you go down in the hold of the vessel with McNealy?

A. Yes sir.

Q. Did not he ask you to point out the bulkhead and the split in the timber itself of 30 or 40 feet?

MR. RYAN: I object, it is not cross examination.

A. I did. I went down with him in the scow and he asked me what bulkhead and I pointed out the bulkhead and that was all there was to it.

Q. Did you see then and there at that time that there was not any split in the timbers?

A. I don't believe I did.

Q. Was there a split in the timbers, irrespective of what you said was split?

A. I cannot say. I say there was an opening in that seam.

Q. You mean to say now, Mr. Niemeyer, that you do not know from your examination that day that McNealy went down in the hold with you, whether there was a split or not in these timbers?

A. I did not examine it.

Q. I did not ask you whether you examined it. Can you state under oath that you don't know that there was a split or that you do know there was a split?

A. I did not examine it.

Q. Was there or was there not a split there?

A. There was not any split there at the time we went down there? I should judge there was because I did not examine it.

Q. How do you judge, on what do you base your judgment, if you did not examine it?

A. If I examine anything I know what it is.

Q. You say you judge, and you did not examine it?

A. I did not examine. You haven't examined the contents of this room but you haven't a judgment of what is in it. That is what my judgment is on; I did not examine and I would not know. I would not know of a lot that is in here.

Q. You now say you do not think there was a split there, or that there is a split there?

A. At the present time I do not think there is a split there.

Q. You do not think there is a split there?

A. At the present time.

Q. Then if there is no split there at present, you were incorrect when you stated at Port Orchard that the bulk-head on the right hand side of the vessel where it was cracked, where the seam was open, was split in the timber 30 or 40 feet?

A. I still say there was an opening in that timber of 30 or 40 feet. I cannot say whether split—I would say a crack.

Q. If you say now you do not think there was a split there then you were in error in your former testimony that there was a split there?

MR. RYAN: I object as immaterial. It does not make any difference whether split or cracked.

A. It was split or cracked.

Q. He testified it was a fresh split in the timber itself. I am satisfied with that statement.

A. I still contend there was an opening; I don't know whether it was a crack or split. An opening was there.

Q. Now I show you Petitioner's Exhibit D for identification and ask you if the corner of the scow in the foreground is the corner of the scow that was injured as you saw it when it came back from Port Blakely?

A. There is one thing I would like to explain. When we went to Port Blakely, I did not know which end, whether the name was the name end that was broke or not. If you will look in the record, I testified to that after being back there.

Q. Was it the name end?

A. Yes.

Q. This shows in the photograph?

A. Yes sir, that is the corner right here where you see the mark is, the mark, raised up, this is the end that was raised up.

Q. What is the height of the stanchions on that scow, or were they at the time?

A. Two feet.

Q. Are they two feet?

A. I would not say positively; I think 18 inches or two feet; some differ, they vary.

Q. The towing posts are higher, but the posts or stanchions at the sides are only 18 inches?

A. Practically the same.

Q. Look at that photograph and see.

A. Well, they look here closer. You see now you get over here, you get closer, this is a tow bitt; does that one look higher than this one, when you are closer forward?

Q. You know the tow-posts are considerably higher?

A. I would say six inches or so.

A. This is higher, that is one third higher—that is considerably higher?

A. I contend they are six inches higher.

Q. How high was the lumber piled on that scow when she went out?

A. That would be about eight feet high.

Q. Eight feet from deck?

A. Yes.

Q. As that vessel lay on the gridiron and received that cargo, was the lumber chute up stream or down stream?

A. Up stream; I would say up stream.

Q. Up the river?

A. According to the way the scow was loaded.

Q. I don't care which end, but as she lay on the gridiron there, the upstream end of the scow, whichever end you call it, was where the chute was?

A. Yes sir; that would be up the river. That lumber comes down the chute this way; you load down here, and this end would be the up stream end.

Q. Now you testified at the former trial, didn't you, that this lumber was piled some seven or eight feet above the stanchions?

A. That would be all right, seven feet.

Q. You just said seven feet from the deck.

A. I said eight feet from the deck; correct yourself.

Q. Now you testified at the former trial that it was—that the lumber was piled seven or eight feet above the stanchions, is that true?

A. I do not remember.

Q. Was it seven or eight feet above the stanchions?

A. I say about eight feet from the deck; I am positive it was eight feet, not exactly within one or two inches, may be off. I will say around eight feet from the deck, not from the stanchions.

REDIRECT EXAMINATION.

BY MR. RYAN:

Q. You loaded this scow in the usual and careful manner, did you?

A. Absolutely.

MR. GORHAM: I object as leading.

Q. What did you do about making it—

A. Would you like to have me explain the loading?

Q. Yes.

A. In the first place there was 6x12 cargo, which was, if I remember 60 to 40 feet long, merchantable lumber. The easiest possible load that you can load on to a scow. It is all the one size 6 inches by 12 inches, and it was all level. You can load it level, it is not like where you have different sizes all mixed up. In a 6x12 load we load it four feet from the top, and don't bind for four feet; then we start the binding wall, put the binders four feet in there, and then up again to eight feet and then we put two feet in or whatever we need in the binders on the outside wing of the tiers on the outside of the scow; and that is to bind the load and keep it from going over or rolling off the scow.

Q. And you had binders all the way through?

A. We always have them put on to barges and on that barge, too.

BY MR. GORHAM:

Q. The binders commenced four feet from the deck?

A. Yes; we never bind below that, because it is not necessary.

BY MR. RYAN:

Q. Did the tugboat, when she came up, look over the scow before she hooked on?

A. They were not there when I left.

BY MR. GORHAM:

Q. What were these binders?

A. Kiln stock, sticks we pile lumber on in the kilns, eight feet long. And we use old lath, when there is some cargo left, and we use four and a half sticks like that. We have used these, and also used longer ones; mix them up so that they tend to bind both together at the same time. We generally make a four foot tier, binding all the time.

Q. How far apart?

A. They run along the sticks perpendicularly?

A. No, just as the load falls.

Q. On the top of the load?

A. All over the load.

Q. As piled up.

A. As piled up; so many tiers we lay binders in to keep the top load from rolling off.

Q. What was the dimensions of this stuff, the binders?

A. Three-eighths by 4⁵/₈ths x 4; some 3⁸/₈ths by an inch and a half, like that.

(Recess taken until 1:30 p. m.)

AFTERNOON SESSION,

1:30 O'CLOCK.

Present: MR. GORHAM, for Petitioner.

MR RYAN, for Claimant.

MR. W. C. NIEMEYER, on the stand for further

CROSS EXAMINATION.

MR. GORHAM:

Q. I believe you testified formerly that there were 1085 pieces of lumber on this scow?

A. I don't remember just exactly but I had that data at that trial. 1085 pieces, that is right.

Q. That was the total load?

A. Yes.

Q. And 340,000 to 350,000 feet that was on the scow. And the difference between what was loaded on the scow and what was delivered at Blakely would be the amount that was lost.

MR. RYAN: Yes, that is what was lost.

Q. How many pieces were picked up, do you know?

A. I cannot say. If I remember the record read everything was picked up except 32 or 34 pieces.

MR. GORHAM: Is that right, Mr. Ryan?

MR. RYAN: They were all picked up.

A. They were all picked up except what was lost. I think there were only 32 or 34 pieces that were lost.

MR. RYAN: That is correct about the number of pieces that were loaded.

MR. GORHAM: We want to get the record straight before we get through.

MR. RYAN: We haven't that data. I think we can agree that there were 1085 pieces loaded, and 185 pieces that were delivered on the scow *Claire* at Port Blakely, approximately 46,322 feet. Now as I understand then, these items as to the number of pieces loaded, the number of feet on the scow when she was delivered at Port Blakely, that we are together on that, so that I will not need to offer any more testimony on that point?

MR. GORHAM: There is no question about that.

(Witness excused.)

OLIVER D. HANCHER, a witness called on behalf of Claimant, being duly sworn, testified as follows:

MR. RYAN:

Q. Where do you live?

A. Port Blakely.

Q. What is your business?

A. Operator of towboats; towboat business.

Q. How long have you been engaged in that business?

A. I have been operating boats for the last 17 years.

Q. On Puget Sound or its tributaries?

A. Since 1909 on Puget Sound.

Q. You have towboats of your own now?

A. Yes sir.

Q. Have you ever done any towing for the Canyon Lumber Company, or the Dominion Mill Company?

A. No sir, I have not towed any for the Canyon Lumber Company directly, although I have towed their scows a great many times for the Port Blakely Mill Company.

Q. And you have towed scows from the Canyon Lumber Company?

A. Yes.

Q. Did you ever have occasion to tow the scow *Claire*?

A. Yes sir.

Q. Previous to December 12, 1918?

A. Yes, many times.

Q. And how recently before December 12, did you tow the scow *Claire*?

A. I would not say, just to be exact.

Q. I would not expect you to be exact; just your best judgment.

A. Some three or four weeks previous to this accident.

Q. And previous to that time, when had you had occasion?

A. I have been towing this scow, that is four or five of these large scows and at that time I should judge that I was towing different ones, different scows out of there from that company an average about two trips a week.

Q. Do you have special remembrance of having towed the scow *Claire*, other than the trip two or three weeks before?

A. Yes, towed her many times, over to Blakely and back again to Seattle, and towed her all over the Sound here.

Q. Did you ever examine her condition?

A. Why yes, I always examine these scows every time I take hold of them to take them out, examine them to see whether they have water in them and what condition they

were in, so as to be sure to get it out of them anyway.

Q. What is your custom as an operator of a towboat with reference to making an examination of a scow before taking her in tow?

MR. GORHAM: I object as irrelevant and immaterial. There is no custom alleged here. And what his custom is would not matter.

A. Well, anybody that tows a scow and he wants to use any precaution at all, ought to examine the scow if she has got a load; take up the hatch and go down inside and see if there is any water in her, so that you could know that your scow is in proper condition to go out and make a trip.

Q. The hatches could be opened when she is loaded and you could go down inside, could you?

A. Well, some scows when you go after them, they have already put on the hatches and corked them down, and you could not get into them. Then the only way to ascertain whether there is water in them, they generally have a hole in the deck where you put a siphon or you might put a pike pole down there and see if there is any water in them. That is the only way to find out.

Q. Did the scow *Claire* have a hole in her deck that you could put a siphon in and siphon the water out?

A. Yes sir, she has.

Q. Was there any other way that you could examine the condition of the scow for the purpose of ascertaining whether or not she had an open place in her seams on the side?

A. You might look around on the outside. You would not be apt to examine the outside of the scow unless she had a heavy list, or at one corner, or something; then we would be apt to look to see what the trouble was.

Q. If you could go inside of any of the hatches when the load was on, then you could discover whether or not there was an opening in her side?

A. Certainly, if she had an opening in the side, you could hear the water run in, if the opening was below the level of the water. If it was above the level of the water you would not know it for a time.

Q. If it was above the level of the water and you could go inside the scow through the hatch, would there be any way then of determining it?

A. The hole would have to be so big the daylight would come through.

Q. Assume it were an opening of some six to eight inches in length and two or three inches in width, could you discover that opening, an opening of that size?

A. We would be very apt to notice that if you went in and examined the scow all through. But you would not be very apt to make that close an examination on a scow unless you knew she had water in her.

Q. But you would not be apt to discover it by looking in the hatch, looking down the hatchway?

A. No, not necessarily, no, you would not.

Q. How would you discover it?

A. The only way you could discover that would be by making a minute examination of the scow. And there is no captain that does that who is handling the scow unless they know something has happened to the scow.

Q. Well, when loading a scow you of course would discover an opening of that kind, would you not?

A. You would more certainly after she was loaded if that opening was below the water.

Q. If above the opening?

A. Not necessary; you would not; a man might go into that scow; she might have a hole in her and you not notice it.

Q. You would see daylight through there, through that much of an opening, would plainly show daylight?

A. It should.

Q. And you went inside the hatchway into the hold between one of the compartments, you could plainly see the light through that opening, could you not?

A. Well now, let me illustrate to you. Suppose a scow was up against a dock; say the dock was standing up here and you went down into the hatch and the corner of the scow is right close to the dock and it is dark there, that scow is up against the dock. You might have a hole there big enough to stick your hand through and not see it.

Q. Yes, captain, but if it is out where the light will come through, then you could see it?

A. Then you could see it.

Q. You will take the other assumption, that it is not dark at the side of the scow, then that opening of that size you could plainly see it by making an ordinary investigation, by looking in the compartment, could you not?

A. If you went down in there and went clear through the scow which very few people do.

Q. That does not make any difference, captain, what they do in that respect.

MR. GORHAM: I think that is the gist of that examination; you are trying to prove people do that and he says they don't.

A. A man would have no occasion to go into a scow.

If I went up to Everett, for instance, after this scow *Claire*—
Q. Just answer the question which I ask you, captain, then, if you want to explain—

A. That is what I was getting at.

Q. Then you could plainly see that opening, if there were daylight outside, if you went down into the hold of the scow? Just answer that yes or no.

A. That is a question in my mind whether a man would discover that hole or not.

Q. Could it be seen if you looked down the hatchway?

A. I would say no, you would not see it.

Q. Could not you see it if you went down in the compartment there and the opening was three or four inches wide and six or seven feet long.

A. Why yes, you could see it if you looked right straight at it.

Q. Assume a man went down there to examine the scow before taking her out?

A. He would possibly see it; a man should see it if he went down there looking for a hole and trying to find it. He probably would find it.

Q. Now, captain, you have towed that scow. Where was the last tow you made with her?

A. I would not say. I have towed that scow so many times and it is just possible that I took her to Blakely. That is where she went the majority of times. Sometimes I have towed that scow directly from the Canyon Mill Company to the Skinner & Eddy Ship Yard.

Q. How did you find her, as to being seaworthy?

MR. GORHAM: I do not see how that is material. It is sometime prior to this accident.

Q. You had towed her many times, up to three or four weeks before the accident?

A. Yes, many times.

Q. You may answer the question.

A. Well, as far as being seaworthy, the scow was in good condition, I would say to take a load at anytime.

Q. Did you ever have any trouble with her?

A. No sir, never had trouble with that scow.

Q. On this particular night of December 12th, or the night on which this scow was being towed by the Pacific Towboat Company tug *Defender*, were you out in the waters of Puget Sound?

A. I left Port Blakely sometime during the night; I do not remember just the exact hour. I went away that night with a scow.

MR. GORHAM:

Q. With which scow?

A. Another scow, one of the other scows. I was going to Everett that night and it was blowing quite hard, I should judge somewhere in the neighborhood of 20 miles an hour, possibly more. And when I got up to Edmonds I noticed lumber all over the water, and lumber from there to Muckilteo. I was steering myself and I had to dodge that lumber. Pieces all over the water, and I went on up to Everett that morning, and got there about four or five o'clock in the morning, I believe, if I remember right.

Q. Was the water on that night such as would make it dangerous to tow a scow such as the *Claire* loaded with lumber?

A. I know with my tug I would not attempt to go out in a wind that was blowing at that time.

Q. You would not attempt to go out.

A. No. It would not be much use. I might be going backwards. I would not have power to pull against it without a load.

Q. How does your tug compare with the tug *Defender*?

A. The tug *Defender* is probably 150 horsepower, and mine is only a gasoline boat with 75 horsepower.

Q. Would you say the tug *Defender* would be able to handle a scow loaded as this scow was, on that night, when she was carrying about 290,000 feet?

A. Yes; she would be able to pull against the wind all right.

Q. If you had a scow, being an experienced tug boat man, if you had a cargo of lumber of the capacity as was being carried in this particular case. And this scow was taken first to the mouth of the Snohomish river, before you ventured out in the open to cross the Sound or arm of the Sound, what, if anything, would you do about making an examination of the scow to determine her condition at that time?

A. Well, if I had known the scow was all right when I left the river, if I could see the scow after I was out, was outside of the river, I would say the scow was all right, if I did not see a list in her. Immediately after a scow commences to take water she will take on a list. You will notice it right away, if it is day time. And if it is night time, you could not see the scow and you suspicion she may be a little leaky, then we would always go and examine the scow.

Q. Are you familiar with the condition of the waters of the Snohomish river?

A. Yes sir.

Q. You get no sea there, do you?

A. No, there is no sea in the river proper.

Q. There is no wash, such as would interfere with the handling of the scow?

A. No sir.

Q. Assuming that the scow on arrival at Port Blakely showed that she had an opening in one side, a distance of approximately 10 to 12 feet in length, and about three-fourths of an inch on the inside, what would you say as to that scow being in seaworthy condition to go out in the waters of Puget Sound?

A. She would sink within two hours with a seam open like that and the swell running over the seam.

Q. Assume that a scow, being loaded as this scow was on that night, and being towed down the river, that she would strike the bank of the river while moving, would that have a tendency to open a place like that in the scow?

MR. GORHAM: I object. The conditions under which the maneuver is assumed to have been made, are not in sufficient detail to give the witness an opportunity to pass judgment on it.

A. Well, a man might run into the bank with that scow one time and not do any damage to her. Depends on the way he came in contact with the bank. He might have come in contact with the bank up against the soft mud and have no damage on the scow. Yet he might come in contact where there was a stump or something, and it would not take much of a punch to punch a hole right through the scow; a very light jar against one of the scows will punch a hole right through the plank.

Q. Do you know what the condition of the bank of the Snohomish river was, down Steamboat slough at that time along the route which this scow was being towed, with reference to there being any driftwood?

A. The banks of the river is composed of sand and mud and the banks of the river is lined with trees; and it seems the banks of this river or the whole body of land is composed of land that has been filled in there or built in there during the ages, and the banks are more or less filled up with stumps and roots and things; the whole bank is full of stumps and things.

Q. Are these roots and stumps which project out through the bank an impediment or dangerous to navigation?

A. Well, not necessarily unless there is an accident or something and he has reason to run ashore or bump into the bank.

Q. If you run into the bank then the stumps and roots would do more damage?

MR. GORHAM: I object. I am going to move to strike all your testimony because you do not heed our objections. I do not think it fair.

MR. RYAN: That question may be stricken.

Q. What effect would these stumps and roots and drift-wood you speak of being in there, what effect would they have on a scow being towed there, assuming the tow ran into the bank?

A. That depends on where a man ran into the bank. He might run into the bank and run into mud. And again he might run into the bank and run slap bang against an old tree or stump that had been sawed off.

Q. If he ran against a root or stump how would that affect the tow?

A. Liable to punch a hole in the scow or tear it wide open.

Q. Did you examine this scow while she was at Port Blakely?

A. Yes sir, I did.

Q. What condition did you find her?

A. Well, I moved the scow from the dock over there to the beach. She was full of water, and put her alongside the gridiron or a bunch of piling on the beach there, a gravel beach, and she layed right in front of my house, and naturally I had the curiosity and wanted to see what had happened to the scow, and I went down there and examined the scow. I never made a thorough or close examination of the scow. I went up and looked at her. I saw several seams open and water running out. I went down when the tide was clear out and she was dry of water. The water came out through a hole in the scow. I noticed a seam open at one end and also several seams that were open at that time in making the examination of the scow. And when we looked at her I just supposed that scow had become full of water lying on the beach the force of the water inside had forced the corking out. That was what my attention was called to at the time.

Q. The scow being filled with water it will force a certain amount of the corking out in escaping from it?

A. Yes, sometimes it will push the plank off.

Q. But, did you observe any special place in the scow?

A. Yes, sir, I did. I noticed one place close to the bottom, bottom seam, and the seam was four or five feet the corking was out of at that time. And also, up close to one of

the ends, the water was running out of the scow, the scow was still full of water, and as she laid on the beach she had a little slope to her, and the water was down on one side and running out of that hatch. And also out of this seam at the corner, a big seam along about close to the bottom, about the middle of the scow.

Q. Did you examine the bulkheads and compartments?

A. It has been so long ago I don't remember just what it was, although I was there at that time.

CROSS EXAMINATION.

MR. GORHAM:

Q. When you have had scows belonging to the Canyon Lumber Company, from their mill to Port Blakely, that towage service has been performed at the request of the Dominion Mill Company?

A. No sir, I never towed any scows from the Canyon Lumber Company, that is the only cargo the Canyon Mill Company the Dominion—

Q. Your towage service was for the Port Blakely Mill?

A. Yes sir.

Q. In other words the Canyon Lumber Company chartered the scow of the Port Blakely Mill and instructed you to go and tow it and you performed the service.

A. No, that is not just the way it is there. The Port Blakely Mill, they have a lumber wharf they can get at, and they have bought large quantities from the Canyon Mill Company. In buying in such large quantities of lumber from the Canyon Mill Company, the Canyon Mill Company lets the Port Blakely Mill Company use their barges.

Q. They charter them and have them load them and then the mill—

A. They load the lumber there and the Port Blakely Mill Company hires the towing done.

Q. That is it, so that the vessel was under charter, the scow was under charter to the Port Blakely Mill?

A. Yes.

Q. You do the towing for the Port Blakely Mill?

A. Yes, that is the idea.

Q. Now when you say that she might come up against some of these stumps and punch a hole, you mean break the timbers?

A. Yes sir, if she came in contact with a stump and hit a plank in between the bulkheads, the plank would sure go.

Q. It would break it.

A. Yes.

Q. It would not be an opening of a seam?

A. Depends which way she came in contact. You might run a scow against a stump and come directly up against a bulkhead and it would not break the plank. Then it would have a tendency to spread something some place or open a seam up.

Q. What part of the scow would come in contact now?

A. If she came in contact directly in front of one of these partitions that is in the scow—

Q. At the end of the scow?

A. Yes.

Q. But if she came on the corner or at the side?

A. If she came on the corner or side, you have the same thing. You have the side that breaks in of the scow.

Q. And would you say it would punch a hole there?

A. It would if it hit between the bulkheads, beside the bulkhead.

Q. This is at the end?

A. Yes sir.

Q. But it would not punch a hole through her on the side?

A. Not if you were headed directly down stream. The scow head—the scow would not—she would butt up sideways against the bank.

Q. And the end would not be against the stumps on the bank.

A. Not necessarily, no.

Q. If the tug was made fast to her, the tug would control that maneuvering, would it not?

A. Well, he should keep the head end of the scow pointing down stream, unless he lost control of the scow.

Q. The chances are then that if she dropped off to the side of the stream because of any reason, that he would hit the side of the scow, if she is heading down stream?

A. If he hit the bank with the corner of the scow, then he has got to stop right there; and the current running at that time, after high water, the current running down stream, the scow turned around and came bump up against the bank sideways.

Q. That would force—

A. That would not have enough force, I should think, to hurt the scow any, the sides of the scow are very thick, probably six or eight inches thick.

Q. You have been along the bank there on the shore?

A. Oh, I have been up and down that river quite regularly since 1913.

Q. Have you been ashore?

A. Yes sir.

Q. Are you familiar with the right hand bank as shown by Petitioner's exhibit B?

A. Yes.

Q. That is a fair photograph of that country?

A. Yes, that is a very good photograph.

Q. And just beyond in the picture is the bend at which the steamer passed out of sight from the mill?

A. Yes sir, about a quarter of a mile from the mill.

Q. If she went ashore and could be seen by the men at the mill, she went ashore somewhere on the bank as shown by that picture? Is that right?

A. I don't know anything about where she went ashore or what point in the river.

Q. But if she went ashore before she got out of sight she must have gone ashore on the bank that is shown there?

A. Yes, if she went ashore on the right hand bank going down the river, she was in a bunch of stumps and brush there.

Q. How do you know?

A. Your exhibit shows that and I know—

Q. Is that in detail enough—

MR. RYAN: Let the witness finish.

A. Just as the picture shows, all full of roots and stumps and brush.

Q. Now as a matter of fact, is not that bank a lot of soft mud; some of these roots and stumps are up above the water line. Can you see anything below the water line there by that exhibit?

A. Not from the picture, you would not see below the water line.

Q. Then there is nothing to show stumps below the water line is there?

A. No sir, but I would state that if the scow came in contact with the bank, headed down stream, or if headed toward the bank, that scow has a shear on her or cut-away underneath, and it would be very apt to come in contact with the bank above the water line.

Q. Above the water line of the river on the bank?

A. Yes, above the water line on the bank, certainly.

Q. And what tendency would that have on that scow, loaded with 294,000 feet of lumber, could you tell?

A. Well, you might run into the bank a dozen different times and each time you would have a different effect on your scow. It all depends on what the scow would come up against.

Q. When you examined this scow over at Port Blakely

and saw a seam open three quarters of an inch wide, by how many feet long?

A. I did not say it was open three-quarters of an inch or how long it was. I said I noticed the scow had several seams open in different places, and what I believed at that time was that the corking had been forced out from the scow after she was put on the beach. That is what I thought at the time.

Q. You do not know anything about it?

A. I do not know what happened to the scow, whether she had been up against the bank or where she had been.

Q. But if she had been on the bank with what force would she hit it?

A. I don't know anything about that.

Q. Now the seam that was open, I think you said there was a seam open just below the guard?

A. Well, yes, on one corner.

Q. What corner was that, the corner where the name was, the name of the vessel on the end?

A. I would not say; I do not remember whether I noticed any name on the scow or not at that time.

Q. I will show you exhibit D, which one of the witnesses for Claimant has marked showing where that seam was open at the end. And it shows there that that end of the scow has the name *Claire* across it. Does that recall to your mind where you saw the seam, with reference to that name?

A. No. I would not recollect, that does not recall anything to my mind with reference to where the seam was open. Because I did not know that name was on the scow at that time in the same place it is now. That scow might have had the name changed. I did not take notice of where the name was in regard to the seam.

Q. You remember there was an open seam near the bottom?

A. Yes sir.

Q. On the same side with the other open seam?

A. Yes sir, it was on the offshore side and down close to the bottom.

Q. How many planks from the bottom?

A. I think that seam was the first one from the bottom, that would be whatever these planks width was. If it was a 12 inch plank, it would be 12 inches from the bottom.

Q. At the top of the plank?

A. Yes.

Q. The oakum was gone?

A. Water was running out of there in a stream wide as your hand and six or seven feet long there. You must re-

member that scow was corked down there before they returned her, and these seams fixed up before they returned her to the mill. Probably these people never knew about that.

Q. Before she was returned to the Canyon Mill Company?

A. Yes sir. She had to be, so that they could tow her back.

Q. What was the condition of the hatches when you made that examination?

A. The hatch covers were all gone. She had been towed around in the storm that night. Some were hanging by their chains; these hatches are fastened on to the scow with short pieces of chain. Some of these hatches were gone, had been torn off and washed away.

Q. And others remained?

A. Others were hanging there. I remember when I put the scow on the beach some of the hatches were floating.

Q. No hatch in place.

A. I don't know whether any were in place or not; I would not say.

Q. Could you tell what amount of corking had been done on these hatches?

A. It would not show, if there happened to be corking it would all float away.

Q. Now the hatch cover sets inside of the coaming of the hatch, doesn't it? And it sets down on a little offset?

A. Yes, that is the idea.

Q. How far below the hatch coaming does the hatch cover set?

A. On this particular scow the hatches are about two feet and a half of three inch material.

Q. The hatch covers?

A. Yes sir.

Q. But they might protrude some above the hatch coaming?

A. They come down flush on to the deck of the scow.

Q. Two inches or two and a half, you say?

A. That is the thickness would be where the hatch is placed on the scow, it is a little bit higher than the deck of the scow on this particular scow.

Q. The coaming comes up around?

A. A little frame work there that the hatch cover sets in.

Q. There would be how much space for corking there, perpendicularly I mean?

A. The thickness of the hatch cover.

Q. You came out of Port Blakely that night at what time?

A. I do not remember but I think I left at one o'clock.

Q. With a scow in tow?

A. Yes.

Q. And you were running before the wind?

A. Yes sir. Took me about three or four hours to get down.

Q. You were bound to Everett or Muckilteo?

A. Bound for the Canyon Mill Company.

Q. When you got a little beyond Everett you got into this lumber adrift?

A. Up here at Edmonds, half way to Everett.

Q. I meant Edmonds. Now what was the condition of the weather there?

A. It was blowing a gale of wind at that time.

Q. You do not call twenty miles a gale of wind?

A. That is a gale of wind if a man is trying to tow a scow up against it.

Q. You had the wind with you, you had a fair wind?

A. Certainly. It would not affect me, only help me out a little, I had an empty scow.

Q. As a matter of fact the scow *Claire* would stand up against that wind as long as the tug?

A. Not necessarily.

Q. Now I am wanting your opinion as an expert; you are a steamboat man?

A. Well, if you want to know what I would actually do in a case of that kind—

Q. I did not ask you what you would do. I ask you as an expert mariner, whether or not that scow *Claire*, loaded as she was, would stand up against the storm as well as the tug *Defender*?

A. No sir. I would have been hunting shelter; I would not have gone out in that.

Q. You would not with your gasoline boat.

A. I would not attempt to tow when you had a high wind like that.

Q. You do not know what the wind was when he left, do you?

A. I know it was blowing all that night.

Q. You do not know what it was at Priest Point, do you, when you were at Blakely? Do you know how strong the wind was blowing at Priest's Point, of your own personal knowledge?

A. Well, what I would believe—

Q. I did not ask you that, I ask you if you know?

A. I would not know, certainly not.

REDIRECT EXAMINATION.

MR. RYAN:

Q. You say you would not have gone out with a scow that night with the wind blowing as it was there?

MR. GORHAM: He qualified that by saying he did not know what wind was blowing.

A. I left Blakely that night sometime around one o'clock or may be a little later, and it had been blowing hard at Blakely and it was blowing hard when I arrived at Everett, consequently it must have been blowing all night at Everett the same as it was in Blakely when I left. So I would base my opinion from that that the storm was continuous throughout the Puget Sound District, that there was a strong wind blowing.

MR. GORHAM: I move to strike that as merely his opinion; he does not know anything about it and it is irrelevant and immaterial.

Q. Now you also base your opinion upon the experience you have had in navigating upon Puget Sound, do you, as to the condition of the weather for that night?

A. Yes sir, when it is blowing southeast or southwest wind at the rate it was blowing that night, it will blow approximately as hard at Everett as it will on the upper Sound here. But on other occasions I would say that I have left Port Blakely and went to Everett with the wind in the northerly direction and be blowing a light breeze in the upper Sound from the south; and you get to Everett and find it is blowing a different direction, and I would think may be the wind had changed and I would turn around and come straight back and still find the same direction of wind in the upper Sound, and yet it would be blowing in a different direction down there.

Q. On this particular night what direction was the wind blowing?

A. It was a southerly direction; I would not say whether southeast or southwest.

Q. But it is that kind of a wind you say, that your experience has taught you that you find the weather conditions quite the same at Blakely as they are at Everett?

A. Yes, at this particular time of year I would say it was blowing possibly at Everett as on the upper Sound here.

Q. And you say if you had been in charge of a tow of that kind in such weather as that, you would have sought shelter?

A. I would have tied up at Muckilteo; that is where I would have tied up.

Q. Does a tug of this kind carry any appliances for the purpose of saving its cargo in a storm of this kind, in the way of pumps?

A. Well, sometimes steamboats are equipped with siphons and when they find that a scow is leaking they try to get shelter to siphon her. But a man would never, out in weather a night like that, towing on a night like that, know whether she was leaking or not. You cannot see the scow.

Q. Could not they have gone aboard the scow and put a pole down the siphon hole?

A. A man in towing a scow, he generally has it anywhere from 300 to 500 feet of tow line fast to her. And he starts out knowing or considers she is seaworthy, and he tows on and he don't go back to see whether she is leaking or not, unless he ties up and he would not have known. If he suspicious the scow is leaking he would go to shelter with her.

Q. Did you observe the weather on that particular night sufficiently to state when the wind first came up, what time of night the wind came up?

A. It has been so long ago now; I don't know when the wind started to blow.

Q. You left Port Blakely at what time?

A. Somewhere around one o'clock.

Q. It was blowing at that time?

A. Yes, it was.

Q. Can you tell how long before, or approximately before, how long it had been blowing before you left?

A. I would not state at the present time. All I know at the present time is that it was blowing when I left Blakely and I don't know whether blowing all night or not.

Q. Do you have a recollection as to whether the wind came up suddenly about one o'clock or had it come up before?

A. I don't remember about that.

Q. And in your opinion, with the wind such as you experienced on leaving Port Blakely, would you say that it made a sea such as was not safe to tow in?

A. It was not safe to tow that night, not with a loaded scow, that night.

MR. GORHAM:

Q. I understand you to say in all storms from the south on Puget Sound you have the same force of wind at Blakely that you do at Everett? That is your expert opinion as a mariner?

A. That has been my experience, when blowing a southerly direction a velocity of anywhere from 20 to 30 miles or more than that, that the wind carried right straight through the same force.

Q. It all depends on other conditions, the barometer and temperature, does it not?

A. Well, the way I understand the air proposition, that there is a low pressure off on the east coast or west coast of Vancouver Island, or away up in Bering Sea, and you have your rush of air to that low pressure, and the consequence is that throughout all the country lying on this side of the low pressure, you have the same force of wind or approximately the same.

Q. Then it would extend from a thousand to two thousand miles to Bering Sea? That is your experience, is it?

A. Yes.

Q. How many years have you navigated in Bering Sea?

A. I never have been on Bering Sea. I did not say anything about that, I said—

Q. —What you understand.

A. What I understand about the wind, through different reports, or what the weather bureau states, it will be blowing 20 miles at Cape Flattery, and probably be blowing 10 or 15 in here.

Q. Might be more or less than at Cape Flattery? According to the pressure inside, is it not?

A. You had your low pressure from Bering Sea some place.

Q. What do you mean by low pressure?

A. Low pressure—what is the cause of atmospheric pressure?

Q. What do you call low pressure, not what causes it but what do you call low pressure? What would be the reading of the barometer on what you call low pressure?

A. Well, the barometer may read anywhere below 30 and you might get a storm.

Q. I did not ask you that question. What do you call low pressure. You have been talking a good deal about low pressure?

A. Everybody who reads the papers where it states low pressure off Vancouver Island or some place—we don't have to know what low pressure is, or what causes it to become low pressure, but we know there is such a thing as low pressure.

Q. That is all you know about it?

A. Yes.

Q. And you are advised by the Weather Bureau of that fact that there is low pressure region.

A. Yes.

Q. Now would the barometer reading be the same at Blakely as it was at Everett?

A. That would not make any difference in it in 30 miles.

Q. Do you mean there would not be any difference in the reading?

A. All these barometers we have here, they register storm warnings within a hundred miles radius, and the consequence is that all barometer readings within that 100 miles radius will read approximately the same; that is the way I understand it. I may be wrong.

Q. If your barometer was rising at Everett on this night, how about it at Blakely?

A. It should be rising at Blakely.

Q. Would you call that a low pressure?

A. I don't know anything about what a barometer has to say about low pressure, the reading for low pressure; I don't know in what relation the barometer has to low pressure.

Q. You do know that the weather charts show the direction of the wind one day and the next day it is in an entirely different direction?

A. Yes.

Q. There must be a time in that 24 hours when it changes?

A. Yes.

Q. Don't blow continuously in one direction for a thousand or two thousand miles at the same rate?

A. If they had low pressure the atmosphere would be traveling to that low pressure. Not necessarily.

Q. Same rate of speed all the way through?

A. It should. I want to qualify—

Q. Between Blakely and Everett?

A. Yes, that would be my contention.

MR. RYAN:

Q. You stated you had been on these waters how many years?

A. I have been working on the Sound since 1909.

MR. GORHAM:

Q. Do you make a distinction?

A. When I said working I meant engaged in the operation of boats.

MR. RYAN:

Q. What about a scow, such as the *Claire*, does she have any stern or bow, that is in marine use?

A. Not by tow boat men. But she has a technical bow and a technical stern, as far as the Customs House is concerned, about placing the name of the scow, it says the name shall be placed across the stern of the scow. When that name is placed on there, the way I understand it, that would be the stern of the scow.

Q. Do your men always tow the high end ahead?

A. Yes sir, that is the idea.

Q. Then this scow had the same construction at each end and could be towed either way?

A. Yes.

Q. Then do you know whether or not any attention was paid to what might be the bow or stern by the tow boat men in handling the scow?

A. Only through the way the scow was loaded. At other times some fellows would take hold of the scow in the most convenient way, if she did not have very much difference in the load, they would hook on either end, if they were loaded at a place where they could not get at it very easy, they would hook on whichever end was most convenient to get hold of.

MR. GORHAM:

Q. You spoke about ascertaining whether this scow leaked or not. How does the water run from the outside compartments to the interior compartments, when the water gets into the hold of the vessel, if it runs from the outside compartment to the inside compartment?

A. You mean if the water goes into the scow?

Q. How it goes from one compartment to the other.

A. These bulkheads in that scow have limber holes cut in them so that the water will pass from one partition to the other.

Q. How many limber holes will there be for the full length of the scow?

A. In the construction of the scow they may not cut holes into them, but they may be put in later.

Q. You do not know how they did with the *Claire*?

A. No, I do not. I believe there is limber holes in this scow. I have been in there many times.

Q. If she was down by the head, or down by one end, when she was loaded, that water would not run freely through the different compartments?

A. The water would all be gathered back to one end.

If she had six inches of water, and she had a six inch rake, the front end would be dry; and probably back a little ways you could see the water in the scow.

Q. If she was tipped a little the water would run down.

A. You have the water all at one end.

Q. How far back would these limber holes be from that end?

A. Limber holes naturally extend through the vessel.

Q. How many limber holes would there be?

A. On both ends. And then these bulkheads are not corked and the water would run through any place.

Q. What is the dimension of the timbers in the bulkheads?

A. Depends on the construction of the scow.

Q. 12 inches?

A. Some 8x12.

Q. A twelve inch timber, what would be its dimensions?

A. 12 wide and say 8 inches the other way.

Q. Now 12 wide, that would be upright?

A. Yes.

Q. You would have to have 12 inches of water in there before it would go over that?

A. If they didn't have limber holes.

Q. You are speaking about it running through the bulkheads. She would have to have 12 inches of water before it ran over them?

A. Yes, if there were no limber holes.

(Witness excused.)

STAFFORD WILSON, recalled, testified on behalf of Claimant as follows:

MR. RYAN:

Q. Mr. Wilson, after corking down the hatch covers as you have testified, did you fasten them in any other way?

A. Yes, we always take a 20 penny spike and put in four spikes and bend them over.

MR. GORHAM: I move to strike the answer as not responsive to the question.

Q. Did you in this particular instance?

A. Yes.

Q. You have heard the testimony and queries of counsel for the Petitioner, with reference to the limber holes being in the partitions of the scow?

A. Yes.

Q. Were there limber holes in that scow?

A. Yes.

Q. How many?

A. There is four. There is one in every partition, in each end.

Q. Where are they located?

A. Well, the gunnel of the scow. You see this gunnel sets on the bottom; and it is cut out about 8 inches long and about four inches high, and the bottom plank sets right over, and that leaves a hole right there on the bottom of the scow, on the first timber.

Q. So that water could pass from one compartment to the other.

A. Yes.

(Witness excused.)

W. F. OLDENBURG, a witness called on behalf of Claimant, being duly sworn, testified as follows:

MR. RYAN:

Q. Where do you live?

A. Everett.

Q. What is your business?

A. Gas engineer.

Q. As such have you ever handled any tug boats?

A. Yes.

Q. What tug boat?

A. I have worked for the Ainsworth & Dunn Packing Company in Blaine for six or seven years; and several different other outfits.

Q. How long have you been navigating the waters of Puget Sound?

A. Ten or fifteen years.

Q. How long in the capacity of captain of different tug boats?

A. About six or seven years at Blaine.

Q. And have you navigated such tugboats in and about the vicinity of the mouth of the Snohomish river, between there and Everett?

A. Once in a great while we did a little, but not very often.

Q. Are you familiar with the barge *Claire* owned by the Canyon Lumber Company?

A. Yes.

Q. Were you so in the year 1918?

A. Yes sir.

Q. Did you have occasion to tow that scow any time during the year 1918?

A. Yes sir.

Q. From the mill of the Canyon Lumber Company?

A. Yes.

Q. When was the last time, prior to the date of December 12, 1918?

A. The trip before she made that one to Port Blakely.

Q. And how long before that trip do you know, just your best judgment? Was it a week?

A. I could not say to that exactly.

Q. Was it to exceed ten days, do you think, before this time?

A. Well, I could not say; somewhere in that neighborhood. I could not say.

Q. What kind of a sea did you have to make the trip?

A. We had nice weather that trip to Anacortes.

Q. And what condition did you find the scow in at that time?

A. All right.

Q. Did you have occasion to examine her?

A. Always examine a scow taking it on a long trip, to see that there is no water.

Q. You examined her on this trip you took?

A. Yes sir.

Q. You found her in good condition?

A. Yes sir.

Q. You towed her loaded, did you?

A. Yes sir. I do not remember how much lumber or timber there was on her. I know she went to the ship yard at Anacortes with all kinds of lumber on her.

Q. Did she take any water on the trip?

A. Not that I remember of.

Q. Has she taken water on any trips that you have taken her, that you remember?

A. Not that I remember. You pump some of these scows out once in a while. I would not swear whether I ever pumped the *Claire* out, or any of the rest of them or any particular one.

Q. Do you have any recollection of the condition of the weather in and around Everett on the night of December 12th, 1918?

A. No sir.

CROSS EXAMINATION.

MR. GORHAM:

Q. What was your position on this vessel?

A. Gas engineer.

Q. How large is that—the *Margaret S.*?

A. 58 feet keel.

Q. What horsepower?

A. 125.

Q. How long were you making the tow from Everett to Anacortes?

A. I could not say exactly. If I remember rightly we were laying to one of the buoys and waited for a few hours for the tide, and went right on through.

Q. Did you tow from Everett or the Canyon Mill?

A. From the Canyon Mill.

Q. Do you know of a tug having refused to make that tow from the Canyon Mill to Anacortes with that cargo, just previous to your towing her at that time?

A. No sir.

Q. You never heard of that?

A. No sir.

(Witness excused.)

CAPT. J. C. JOHNSON, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

MR. RYAN:

Q. Where do you live?

A. Port Blakely.

Q. What is your business?

A. I am not a captain. Boat building and ship building.

Q. Did you examine this barge *Claire* on her arrival at Port Blakely about December 12th or 13th, 1918?

A. No sir. I examined her about the 25th or 26th of December, after she had been in Blakely sometime and was blown on the beach there.

Q. Just state what you observed as to her condition at that time?

A. Well, at the time I went down to examine this scow, there was three or four feet of water on the outside, at least 18 inches in the hold. I had a skiff and went all around the scow. And I found on one corner the oakum was out of there, and some seams were open at least three-quarters of an inch, for I remember sticking my ruler in there. It was not quite an inch but it was very near, probably three-quarters of an inch. I made my report three-quarters of an inch.

Q. How far back did that opening extend?

A. The oakum?

Q. How far did the opening extend?

A. From the end?

Q. Yes.

A. Well, it was a little ways inside the guard was tore off from the end and the whole of the oakum was out three feet long, and that is on the side of the scow. On the end of the scow on the same end, there was an opening but not quite so large; and I could see along this opening probably two feet that the oakum was out entirely and it was an open hole.

Q. Did you examine the partitions or compartments on the inside of the scow?

A. No sir, I didn't have no boots on at the time. And I looked down through the hatch is all, I had no occasion to look at the inside of the bulkhead. I was looking at the outside where the water might have gone into the scow. And I found that and I thought that was enough to sink a scow at the time she was out.

Q. In your opinion had this opening in the scow been caused by pressure from within or something from without?

A. That I could not tell. Most likely it had. The sea was so big and the oakum was loose, it would have come out very easy with the pressure of the storm, or anything from the outside would pull it right out.

Q. Well, this opening in the seam, could you tell whether or not it had been caused by something from without by the water striking it from without?

A. No, I could not tell.

Q. You do not know anything about that. You never operated a tug boat, did you?

A. No, not on Puget Sound anyway.

Q. Do you remember the condition of the weather on the night of December 11th? and the morning of December 12th, 1918?

A. No, I do not. I was only asked to make an examination and to make report to Mr. Mitchell, and I have that report right here. That is as far as I can go, because at the time I have forgotten about the whole thing.

Q. This is a copy of your report?

A. Yes sir.

Q. And this is the same as you have testified in this case?

A. Yes sir, and that is just what I want to testify now, all I know about it.

CROSS EXAMINATION.

MR. GORHAM:

Q. How far below the guard was the seam on the side?

A. It was probably four or five inches below the guard; it was 15 or 16 inches below the deck.

Q. Were there any seams open below that, near the bottom of the scow?

A. So much water on the outside I could not tell at that time; I went around in a boat.

Q. From your examination of the scow made at that time, can you tell whether she was a well constructed scow from the shipbuilder's standpoint?

A. Well, no doubt it was well constructed when she was built, but as I say, the scow had got to be quite an old scow and I think that the planks had pulled apart and caused this opening. I cannot tell how or when they were pulled apart, but they were pulled apart.

Q. What could have been done to prevent the planks pulling apart in the construction of the scow? Any drift bolts?

A. Yes sir, drift bolts.

Q. At that time?

A. Well, I did not examine how far the drift bolts went. The deck planks would cover the drift bolts.

Q. You found the deck planks rotten?

A. In places where the planks, you see there they get kind of worked down and the corners kind of broken off.

Q. Enough to take water in if awash?

A. Yes.

Q. Was there any indication from your examination of that scow at that time, that she was in collision with the bank of the river or some resisting mud with some obstruction in her navigation, that would cause her to open her plank?

A. No, I could not say that. Of course, an old scow like that there is more or less bruises on the corners all over. Bruise her when they strike the piling and the corners rub off.

Q. In other words she was a weak scow at that time, weak in construction.

A. I could not say that because I did not go into the scow.

Q. From what you saw?

A. I only saw this opening in it, and I would not care to say whether she was weak or not.

Q. How long have you been a shipbuilder?

A. I have been in business for myself four years, but trade as a ship carpenter since I was 18 years old.

Q. Wooden ships?

A. Yes.

Q. At Hall's ship yard for a long while, at Blakely?

A. No, I came to Blakely after Hall's Ship Yard moved

out of there. I was at our ship yards on the coast, most all of them.

Q. How did you find the hatches on this vessel?

A. I think my letter says two of them was most altogether; and the others were lying on deck—the covers.

Q. Could you tell whether they had been properly corked?

A. No, because they were all open.

Q. Could you tell whether they were of a construction that could be properly corked?

A. Yes, they could be properly corked.

Q. Could you tell how recent this plank had been sprung on this vessel, from your examination?

A. No, I could not.

Q. Was there anything to indicate it?

A. There was not. I suppose if I had gone inside and made an examination from there; but it might have been lately or might have been—I presume it could not have been very long, because they could not load her the way she was; but I don't know.

(Witness excused.)

MR. RYAN: I offer in evidence letter dated February 10, 1918, signed by G. N. Salisbury, Meteorologist in charge of the United States Weather Bureau, Seattle, Washington. Which is admitted to be the testimony of said Salisbury if present in court and testifying under oath in this case.

Paper marked Claimant's Exhibit 1, filed and returned herewith.

MR. GORHAM: You admit, by your stipulation that the tug *Defender* at the time of this towage service, was in all respects properly tackled, appareled, supplied, manned and equipped with a full complement of officers and seamen aboard, and being in all respects tight, staunch, strong, seaworthy and with sufficient power to perform said towage service, and that the damage complained of was done, occasioned or incurred without fault on the part of the Petitioner, and without its privity or knowledge?

MR. RYAN: We admit your right to limit liability. I don't want to admit by that that she was properly manned. That would stipulate away our right.

MR. GORHAM: We still might have been negligent. But your stipulation waives proof on the part of the petitioner—

MR. RYAN: I will not go any further than the stipula-

tion would compel me to go, and I will not enlarge that. I think you have a right, under the stipulation, to limit your liability.

MR. GORHAM: If though, it was with privity and knowledge, we cannot limit our liability. That is the very essence of the limitation of the liability statute. If the owners have knowledge of these things we cannot limit liability.

MR. RYAN: I realize that.

MR. GORHAM: We do not mean to say that the servants and agents of the owners have been negligent.

MR. RYAN: That is my understanding, and we will have to offer proof here and let the stipulation speak for itself. I don't want to enlarge it.

MR. GORHAM: I would have been more specific in my allegations, is all, in the form of my stipulation.

MR. RYAN: I am not looking for technicalities, but I don't want to put myself in a place where I might be technically foreclosed from any proof I might be entitled to.

PETITIONER'S TESTIMONY.

CAPT. JOSEPH PERKINS, a witness called on behalf of Petitioner, being duly sworn, testified as follows:

MR. GORHAM:

Q. Your business?

A. Steamboat captain.

Q. How long have you been a steamboat captain?

A. About thirty years, I think.

Q. Were you a steamboat captain in December, 1918?

A. Yes.

Q. You remember the loss of the lumber on the scow *Claire*, when the *Defender* had her tow, that month? Do you remember of talking with Percy Ames about it?

A. Yes, sir. Just hearsay. I didn't see it. I did not see the lumber spilling.

Q. Did you see the tug and the scow at the mouth of the river, Priest's Point?

A. Yes sir, I saw her at Priest's Point, out to the dock.

Q. How close to her were you?

A. As near as I could judge about four or five hundred yards.

Q. Did you take particular notice?

A. Yes.

Q. Did you speak them at all?

A. No sir.

Q. You came up the river?

A. No sir, going down.

Q. What was the condition of the scow at that time, as far as you could see?

A. She seemed to be setting on a level keel all right, as far as I could see.

Q. Were they working the pumps?

A. Not as far as I could see.

Q. What time of day was that?

A. I could not remember now.

Q. In the afternoon?

A. I think it was in the afternoon about three o'clock, as near as I can remember, but I could not say for sure.

(No cross examination.)

(Witness excused.)

HERBERT JEFFRIES, a witness called on behalf of the Petitioner, being duly sworn, testified as follows:

MR. GORHAM:

Q. What is your business?

A. Steamboat master.

Q. How long have you been a steamboat master?

A. I have been master for the last four years.

Q. You were master of the tug *Defender* in December, 1918?

A. Yes sir.

Q. Do you remember the occasion of towing the scow *Claire* loaded with lumber from the Canyon Lumber Company mill, Everett, Washington, from the mouth of the river and thence towards Blakely?

A. Yes.

Q. December 11th or 12th, 1918?

A. Yes.

Q. State whether or not at the time, the *Defender* was in all respects properly tackled, appareled, supplied, manned and equipped?

A. It was fully manned and had all the equipment required by law, and everything capable of handling the work she was supposed to do.

Q. She was tight, staunch, strong and seaworthy in all respects for the service for which she was about to perform, when she commenced this towage service?

A. In all ways she was that night.

Q. Was she in all ways seaworthy?

A. Yes sir, she was seaworthy.

Q. Did you have sufficient power to perform the towage service?

A. She had sufficient power to do any job that I hooked on to since I was on her.

Q. What was her horsepower, do you remember?

A. Well, that all depends what you mean, indicated horsepower or nominal horsepower?

Q. Indicated horsepower.

A. Indicated horsepower I think is about 150 to 175.

Q. Do you know?

A. I don't know exactly. I could not tell exactly. I am not an engineer and I cannot figure it.

MR. GORHAM: I have here, Mr. Ryan, a certificate of inspection.

MR. RYAN: That is all right.

MR. GORHAM: I offer in evidence certified copy of certificate of inspection in force December 11 and 12, 1918.

MR. RYAN: No objection.

Paper marked Petitioner's Exhibit E, filed and returned herewith.

Q. I wish you would state what happened when you went to the Canyon Lumber Company and took this scow *Claire* in tow and went down the river with her. Just begin when you went to the Lumber Company there, their mill there and describe how you made the scow fast to your tug; how you took her from the dock and how you maneuvered down stream until you went out of sight of the Canyon Mill Company?

A. When I went up to the mill, the first thing I naturally do would be to look amongst the scows and see where the scow *Claire* was. And I found her lying along the dock and I found her at this dock.

Q. As shown on exhibit A?

A. Yes sir. I noticed the name on the upstream corner of the scow *Claire*, and I went alongside the scow.

Q. Would you call it astern—was it in behind the dock?

A. She was all in behind the dock. The high end of the scow was up stream when I looked at her, and I made fast alongside of her and took her on my starboard side, that is, looking up stream, on my right side, and I pulled the scow out of there and started down stream and I got a little way into—

Q. Which way, straight down?

A. Down Steamboat Slough. I could not go down the main river because the railroad bridge was out of commission and I could not get under there. I started down Steamboat Slough, and a little ways down there the lines of the boat were slacked—

Q. Was she alongside?

A. The boat was alongside the scow. And the lines got slack and I had to stop and tighten them up, so that she would handle the scow better. And while I was maneuvering around getting my lines tight, the scow made may be an angle of 45 degrees across the river. She was not exactly at right angles across the river; may be an angle of 45 degrees, something around there. When I got my lines tightened up I started down the river, and tied up at Priest's Point. I tied up at Priest's Point at one o'clock in the afternoon.

Q. What was the tide when you left the mill?

A. Top of high water.

Q. And slack, was it?

A. It was slack water, yes.

Q. What current in the river is there at slack water?

A. Well, it all depends, if there is a freshet on the river it will turn ahead of time sometimes, it may be thirty minutes after high water, and you could shove a raft of logs around there with a 50 horsepower gas boat. I proceeded down the river to Priest's Point and tied up there, on account of weather conditions. When I came up there and got that scow weather conditions did not permit going through, but I came and got the scow on that tide or I would have had to wait 24 hours for another tide. And I took her out there until I got to Priest's Point and tied up at Priest's Point about one o'clock in the afternoon. I looked over the scow again and she looked all right. I did not see anything wrong with her. And I went and called up the office and Horrocks was in the office at the time—

MR. RYAN: I object to any conversation had with Horrocks.

A. It was to notify him that I was there, and stopping there, that is all. It was the general custom of business when you stop anywhere to notify your owners why you stopped. And I laid there from one o'clock in the afternoon until 11 o'clock at night, and the tide being right I pulled out.

Q. What was the condition of the wind and sea that night at Priest's Point?

A. At the time there was no sea. There was no sea that a man would stop with a scow. There was a little chop but nothing to amount to anything, you would not stop.

Q. You mean at Port Gardner Bay?

A. Yes, at Port Gardner Bay. There was a light south-east wind. There was not any wind that a man would have to stop with a scow. If you stopped in weather for a scow like that, you might as well go out of business with tow boats.

MR. RYAN: I move to strike that part of the answer.

Q. About what was the gauge of the wind?

A. I would not say more than 15 or 20 miles an hour, if it was that much.

Q. What was your glass that night at that time, 11 o'clock?

A. The glass, if I remember right, was something between 29 85 and 30; about 29 90, to be more exact.

Q. State whether or not the glass had been going up that afternoon subsequent to your arrival at Priest's Point with the scow?

A. From the time I left the Canyon Mill the glass had a tendency to rise slowly.

Q. And when did it reach its highest point?

A. Well, it was at its highest point at 11 o'clock when I pulled out.

Q. Now when you left the Canyon Lumber Company's mill, did you have any trouble with your bridles?

A. I put a bridle on first with the intention of taking her away with a bridle and tow line, first, and my bridle broke, the rope parted.

Q. When did it break with reference to being away from the dock, or right at the dock?

A. Right at the dock; the scow had not moved yet.

Q. And afterwards you made her fast alongside and pushed out into the stream?

A. Yes.

Q. And maneuvered on down. Did you come in contact with the bank before you got out of sight of the Canyon Mill Company?

A. No. Never came in contact with the bank at any time. The only trouble when you are alongside the scow is you shove ahead and there is a tendency to shove sideways to a certain extent, but the tail end of the scow load rubbed the tree limbs that overhung the bank of the river, that is, the load, the load of lumber on the scow.

Q. Would you have known if the scow had come in contact with the bank at this place?

A. If the scow had come in contact with anything I certainly would have known it. You take a loaded scow and if it comes in contact with anything that has a tendency to stick, it will break the lines of the boat. I can explain the

way we have the lines. We have one line coming back to the corner of the scow, that is the line you pull on. Then you have another line leading from the front bow across the scow to the tug that is coming behind; and got another line leading from the nose of your boat that leads up a little ways on the scow. These are the lines you steer by. This line leading aft you push her along, and if she comes in contact with anything it will break that line every time, don't make any difference how big the line is.

Q. Was the line broken at this time?

A. No.

Q. Would you have known on the tug whether or not the scow came in contact with the bank, if the blow or contact or impact was sufficient to raise the guard of the scow when she was loaded?

A. Most certainly would.

Q. Who told you about the scow at the Canyon Mill Company?

A. Well, I don't know who it was, whether Ames or who it was. I went up there and I saw it was the *Claire*, and I hollered to the dock, Is this scow ready for Blakely? And somebody said yes, she is already to go. So I hooked on and started out with her. That is the scow I was sent for, the *Claire*, and that is all I know about it.

Q. What was her condition as she was on the gridiron or in her berth there, as regards general conditions, regarding seaworthiness, as far as you know, at that time?

A. Well, at that time I tied up alongside the scow and what I could see of her, that is her deck and hatches, which was very little you could see, and getting the lines on to the scow so as to take her out, I had to climb over on top of the load to get on the far side, you could not walk around the scow, as the hatches were covered with the load, I just assumed that the hatches were in good condition on the scow; she looked in good condition all around, what I could see of her.

Q. You did not take occasion to sound her, to sound the pumps on her?

A. We sounded the scow at the mill; we pulled the plug out on the side of the scow for siphoning and put a pole down there and there was three or four inches of water. There is not much use to put a siphon in on that amount of water, the siphon will not lift it.

Q. Which end, as she lay in her berth, which end of the scow did you put the siphon in?

A. In the light end; that is where I would have put it if I had put the siphon in; I sounded to see what water she did have.

Q. When you got down to Priest's Point, did you sound her again?

A. No, I didn't sound her again, but she was apparently in the same condition as when I left the mill.

Q. On an even keel?

A. Just a slight bit on one end, that was the upstream end; that is the side there was a name on, the upstream end of her. That is the only place I could see a name when I went up alongside the scow at the mill.

Q. How about the end?

A. I could not see that, there was a dock there, and you cannot see from the pilothouse of the boat, you could not see right under there. The only place I could see the name of the scow was on the side.

Q. She seemd to be well loaded and stowed?

A. Well, yes, as the ordinary lumber scow is loaded; she was loaded just about the same as the rest.

Q. If she had been seaworthy would she have weathered any storm your tug would weather?

MR. RYAN: I object as calling for a conclusion assumed in the question, a condition which is not shown or proven in the testimony at the present time.

A. Yes, she should, if the scow was a good tight scow, hatches corked, deck tight, she should have outlived any weather that the *Defender* would go through. Of course there is such a thing if a scow gets out in a sea she will work; if a scow works, if she is an old scow and the plank anyways soft like that, she will puke the corking out of her seams herself.

Q. After you left Priest's Point and went out to sea, starting to Port Blakely, that was at what hour?

A. At 11 o'clock at night.

Q. How long after that was it that the scow got into trouble?

A. Well, it was between 5 and 5:30 in the morning we lost the lights on top of the load of lumber; they disappeared; they went out of sight. And I turned the boat around to see where the lights had gone, see what was the matter that the lights had gone off the top of the load; they are either blowed out or something the matter. I went back to see, and we looked at her, and the scow was badly under water, and the best part of the load was gone; just a kind of a pyramid of pieces, that was all there was on her at the time.

Q. What could you do then?

A. I could not do anything but remain along with the scow; the scow was beyond any power I had to float her. She was afloat with what load there was on her. I pulled

for the first place where I phoned and notified McNealy of the situation.

Q. You remained by the scow?

A. Yes, I stayed with the scow.

Q. How long did you remain by the scow?

A. I stayed with the scow until she was delivered to Blakely.

Q. She was delivered to Blakely the following day that she had lost her load?

A. No, it was five o'clock in the morning when I found the load gone, and we towed up outside of Ballard about eight, not being certain of my time, but approximately about eight in the morning.

Q. That was December 12th, 1918?

A. That was on the 12th of December, if it was the 11th we left. I am not certain of the date. And I think it was about nine or ten o'clock on the night of the 13th that we left the pier outside of Ballard. I had tied up to the dolphin there to obtain shelter from the southeast wind, and I went into Blakely and it was about 12 o'clock at night; it was about midnight of the 13th.

Q. What did you do with the scow?

A. Towed in to the dock and notified the watchman, he was the only man around there; notified him who I was and what I brought in and where it came from.

Q. While she was lying in shelter before you went to Blakely had you and the tug *Defender* assisted in salving any of the lumber, or was that a separate operation?

A. That was a separate operation. I did not have anything to do with that.

Q. After you tied her up at Blakely, you came away, did you?

A. Yes.

Q. Your towage contract was finished?

A. My towage contract was finished.

Q. Now, when you left Priest's Point, was the scow in the same condition as when you arrived there in the afternoon?

A. This scow was apparently in the same condition. You could not see any change in her. I walked around the side of her along the outside of her, with a light, to see if there had been any change, see which was the high end or the low end, and see whether she had gone down any at the low end.

Q. How much freeboard did she have when you left Priest's Point.

A. Oh, I should judge the thickness of the guard, 12 inches, with a plank, about 26 inches, may be less. 26 inches

high on the high end, and about 20 or so on the low end. Just about six inches difference in the two ends.

Q. How extensive has been your experience in towing on Puget Sound?

A. I have been towing on Puget Sound since 1911.

Q. What class of towing?

A. With logs and scows, practically the whole time.

Q. And how far toward sea did you go?

A. Oh, I have towed only scows between here and Union Bay, British Columbia, or even to Ladysmith, Vancouver.

Q. Is the month of December a reasonably good month in towing scows in this country?

A. You would not call conditions bad, no, in the month of December. Conditions are not bad for scow towing. It is not good, either; it is fairly good weather, you might say.

Q. How about short hauls?

A. Take chances on that practically any time with a scow.

Q. Did the lumber come over the ends of the scow as it was loaded?

A. Yes.

Q. How far did it extend over the ends of the scow?

A. Well, maybe two or three feet.

Q. Both ends?

A. Both ends.

Q. Was that lumber raised a little above the floor of the scow?

A. No.

Q. Was it right on the floor of the scow?

A. Right on the floor of the scow.

Q. No hatches available at all?

A. No hatches that you could see.

Q. Did you look at both ends?

A. Yes sir.

Q. Did you hit anything coming down the river from the Canyon Lumber Company's mill to Priest's Point, on that voyage?

A. No, I am positive I hit nothing. The only thing, as I stated before, that lumber hit the limbs of the trees, on the stern end.

Q. Neither the scow nor your tug came in contact with any obstruction?

A. No.

Q. On that little voyage from the mill to Priest's Point?

A. No sir, we did not come in contact with anything to notice, to do any damage; if we had it would have showed some effect by 11 o'clock while lying at Priest's Point.

Q. When you came down at 2 o'clock in the afternoon, why did you not go out then?

A. The weather conditions was too bad. The weather conditions when I left Everett were not fit to go with the scow; but she had to get out of there to save 24 hours delay. The next full tide was not high enough to float the scow.

Q. When you left there to go with the scow?

A. Yes. The weather conditions were not fit to go with the scow, not outside of the river, but we had to get away from there or have 24 hours delay.

Q. That is why you went out at that time?

A. That is why I went out at that time, because the high tide after I left Priest's Point at 11 o'clock, that tide was not big enough to float the scow off the grid iron.

Q. What was the general direction of the wind that night?

A. Southeasterly wind.

Q. Any one on the scow?

A. No.

Q. Is it usual for anybody to be on a lumber scow?

A. Well no, it is not a usual thing. Some of these bigger scows have men on, but very few of them.

Q. Scows this size don't?

A. Scows this size haven't any men on them.

Q. Now, where were you on the tug when you were going down stream from the Canyon Lumber Mill?

A. I was in the pilot house. There was one man on top of the load to watch the bank on the other side.

Q. You heard Mr. Harcher's testimony here with reference to the weather always being the same at Blakely and Everett, didn't you?

A. Yes.

Q. State what your knowledge of that condition is?

A. Well, you take along from the middle of November, along until in March, the wind is very variable; you cannot tell. Now only just yesterday I was going down to Everett with the boat light—

Q. With a southerly wind?

A. Southerly wind yesterday, and I left here at 12—Port Blakely, no wind here in the bay when I left here, and when I got as far as Edmonds, the wind freshened southeast, and when I got into Everett and it was not fit to leave Everett with a raft of logs. And the night before I came down Hoods canal and there was quite a breeze of wind at Point-No-Point there, southeast, and when we got to Seattle there was no wind. And lots of times you will find it southwest wind up here along around Bainbridge Island, and across the Sound here you frequently have a westerly or

northwesterly wind. Different seasons of the year, you take the summer days, mostly westerly winds.

Q. Now the statement of Captain Salisbury, Meteorologist, in evidence in this case, says that December 11th was cloudy with some light rain, low and level barometer, and nearly normal temperature. A general south wind prevailed shifting at times to southwest or southeast. Highest velocity was 30 miles an hour from southwest at 1:23 p. m., and the average hourly movement was 18 miles per hour. That includes the variable wind during the 24 hours?

A. Yes.

Q. That is what you mean by variable winds?

A. Yes.

Q. And this highest velocity 30 miles at 1:23 p. m., to some extent coincides with your statement that at Priest's Point you tied up because the weather was not fit to go?

A. Yes.

Q. There was no storm warning?

A. None at Everett.

Q. For December 11th?

A. No. These other places, I don't know; there might have been some place else.

Q. No storm warning at Seattle, according to his testimony. How long a tow line did you have when you left Priest's Point for Blakely?

A. About 500 feet, I should judge; pretty close to 500 feet.

Q. Have any trouble with the tow line?

A. No, not any trouble with the tow line.

Q. Now, when you found her lights were out, and you went back to her, did you shift the lumber on to that?

A. No sir.

Q. Did not you have occasion to shift the lumber on her?

A. No sir, did not shift any lumber until tied up to a dolphin outside of Ballard.

Q. What was the position of that?

A. Oh, we got it so it put her more on an even keel. It was more to even the lumber up, and so there would be more of a chance of floating her to Blakely and saving what there was.

Q. Were you detained anywhere on the river, after leaving the mill before you arrived at Priest's Point?

A. No sir.

Q. On this voyage?

A. No sir.

CROSS EXAMINATION.

MR. RYAN:

Q. Captain, when you started out into the stream, your lines were not tight then?

A. Yes, when I tied up alongside of the scow, first, my lines were tight.

Q. I understood you testified as you went down stream you tightened your lines?

A. Yes.

Q. What was the occasion of your tightening them?

A. The occasion is, just after you take a piece of line and make fast, you hook on and make fast here and as you pull out you will develop quite a little slack. That is something we expect. You make fast alongside the scow like this and you put your rudder over, and it has a tendency to bring a heavy strain on the line, pulling the scow out with it, and it keeps working back and forth and it will gradually slacken up and you will have to tighten all the time.

Q. When you stopped to tighten your lines then she drifted in the stream some distance?

A. Yes. I backed up on the boat, stopped the headway of the scow to a certain extent.

Q. What is the width of Steamboat Slough there?

A. Well, I should say it is about 225 feet. You can get about three rafts of logs through there.

Q. Is it navigable the entire width?

A. Yes, Steamboat Slough is the most navigable slough there is going up the river to the city of Snohomish. The old river is pretty much covered with bars, although you have more room there.

Q. What is the width of the scow?

A. About 32 feet, I think.

Q. And the width of your tug?

A. 22 feet beam.

Q. Then there was plenty of room for you out in the middle of the stream to navigate the tug with the scow at her side?

A. Yes, plenty of room.

Q. She did drift into the bank so that the trees struck her load as she went down?

A. As I left I had to make this bend shown in this picture (Exhibit C). It shows you the extent of the bend. This is Steamboat Slough, going down there. That is a very clear picture of Steamboat Slough. Where these piles are, there is a cut through there called Union Slough, but it is not navigable. And here is the old river over here going down that way and as far as you can see. That is the

extent of the bend. And the mill sets right across on this bank facing right down the slough. That gives you a clear picture of the slough.

Q. Then you did bear off to the—that would be the north bank of the slough and you got so close to that that your load scraped on the trees as you went along?

A. The aft end of the load.

Q. How long were you standing in the stream crosswise or at an angle of 45 degrees?

A. Oh, I should not judge more than five minutes at the outside.

Q. And you say that if you struck the bank with the scow your lines would break?

A. Yes sir, the line I was pulling on would break.

Q. If that line was not tight it would not break, would it?

A. Yes sir.

Q. Would not there be some slack—

A. If the line was not tight it would have a greater tendency to break. It would break quicker. You would have the boat going ahead and the scow coming back at the same time.

Q. You would have some time in which to slack your boat?

A. Not if your man is up on top of the load. I cannot jump down on deck from the pilot house if I saw the scow going to hit.

Q. Could not you slack up?

A. I cannot slack the boat without slacking my line and hold the boat there.

Q. Did you have a man on top of the load going down?

A. Yes, had a man right on top of the load.

Q. You made no examination of the scow then, before you made fast to her?

A. Not before I made fast. I pulled up alongside and as I made fast and backed her out.

Q. And you took her in just whatever condition she was left there for you?

A. Yes.

Q. And it was in good seaworthy condition at that time, was it not?

A. I assumed that, from what I could see of the scow and the way she was loaded.

Q. And she was properly loaded, too?

A. Well, yes, as far as scow loading goes, I guess she was loaded pretty good.

Q. Now you went down to the river to the mouth, and you arrived there about 11 o'clock?

A. No, about one o'clock.

Q. About one o'clock in the afternoon. Then you made fast and waited until 11 o'clock that night?

A. Yes.

Q. What is the ordinary length of time of towing from the mouth of the river to Port Blakely, how many hours would it take you ordinarily to make it?

A. You mean a scow or raft of logs?

Q. A scow such as you had in tow at this time.

A. Oh, I should judge, with the prevailing weather conditions it would not take any more than about eight hours.

Q. What did you have to determine the weather conditions at that time, did you have a barometer?

A. I had a barometer.

Q. You say it was a rising barometer; barometer then rising?

A. Yes.

Q. Then would weather conditions, or effect upon the barometer be quite the same at that point that it would at Seattle, ordinarily?

A. Well no, I would not say it would, ordinarily.

Q. Would you say then that the barometer readings would be different?

A. It might read a couple of hundredths different, something like that.

Q. That is practically nil, is it not, nominal?

A. Yes.

Q. They are about the same between Seattle and Everett?

A. No, not quite the same.

Q. Probably two hundredths?

A. There is some variation.

Q. What is that variation in the barometer reading, give your judgment as to what that variation would be, between Seattle and the point where lying?

MR. GORHAM: At this time?

MR. RYAN: At any time.

A. That variation always depends on the gage of the glass, the gage of your barometer. I have been lying in port some place waiting for weather, and another boat would come in and I would ask him how his barometer read, and I would read mine and it would read different, right in the one place, one boat tied alongside the other. And one glass will be a shade lower or higher than the other.

Q. What is the difference in the glasses?

A. It might be the glass here in Seattle might read lower than mine in Everett, and if you put them both in

the same place, might read the same or a little different.

Q. Now before you left this point, you telephoned in to your—

A. Into Everett.

Q. You did not telephone to Seattle, did you?

A. Oh, no; telephoned the office in Everett.

Q. And in that office, did you inquire anything about weather conditions in Seattle?

A. No.

Q. You just relied entirely upon the reading of your own glass there?

A. Reading my barometer and my own judgment.

Q. Now you said you had a rising glass there at that time?

A. Yes, rising slightly.

Q. That reading is different from the reading of Mr. Salisbury in charge of the Weather Bureau in Seattle. You have read this report, haven't you?

A. I haven't exactly read it. I have heard it read, it said something about a level glass.

Q. That is what it reads. I will read it to you, just that part of it. "December 11th, 1918, was a cloudy day with some light rain, low and level barometer." That is not what you have been testifying? You testified yours was a rising barometer?

A. I testified to a slowly rising glass.

Q. That would be the opposite to a low and level barometer.

A. No, you could have a low glass and still have a tendency to rise slowly. It could be away down to the bottom if it wanted to.

Q. But there is no rising if it says it is a low, level barometer?

A. That is according to his reading.

Q. Then your reading differs from the reading of Mr. Salisbury, does it not?

A. Slightly.

Q. And "A general south wind prevailed, shifting at times to southeast or southwest. The highest velocity was 30 miles an hour from the southwest at 1:23 p. m., and the average hourly movement was 18 miles per hour." Now what velocity of wind would you consider blowing in that direction, might be a little dangerous to take a tow out, such as you had at this time?

A. Well, there is a whole lot in the size of your sea. Depends on the stage of your tide. If you have an ebb tide running out from Everett against a thirty-mile southeast wind, you will have a pretty good chop, but if you have a

35 or 40 mile wind with a flood tide blowing into Everett, you probably would have no sea at all. And at this time with that southwest wind blowing the tide was ebbing and ebbing good and hard, and the sea made a pretty good slop out on the flats and I decided to stay at Priest's Point.

Q. Now on December 12th. You stayed until midnight—11 o'clock?

A. Yes.

Q. December 12th, only an hour after you left, you say you noticed a change in your glass after that time?

A. No, I did, up to that time.

Q. Was that when your glass read highest?

A. Yes, during that 24 hours.

Q. December 12th was a cloudy day with light rain, low fluctuating barometer, and temperature above normal. A general south wind prevailed, at times from southeast. Highest wind velocity 34 miles an hour from south at 10:45 p. m. Average hourly velocity or movement 19.4 miles. Southwest storm warning displayed at 8 a. m. for ensuing 24 hours.

MR. GORHAM: Let the record show you are reading from Salisbury's statement.

MR. RYAN: Yes.

Q. Now did these weather conditions prevail in Everett at your point of starting with this boat?

A. At 8 a. m. in the morning?

Q. No, 12 o'clock.

A. Those weather conditions did not prevail at 12 o'clock. It don't say so in your letter.

Q. Here is the velocity, highest velocity 34 miles an hour and average hour velocity 19.4 miles. Had you any way to take the velocity of the wind?

A. No sir.

Q. And what wind would you assume you had when you started?

A. From Priest's Point?

Q. Yes.

A. Well, moderate breeze, oh say 12 miles, may be 15 miles an hour.

Q. And how far had you gone before you discovered the scow was swamped?

A. About 18 miles, as far as Richmond Beach.

Q. What portion of the distance from the point you started to Blakely?

A. Taken from the point I started from the Canyon Mill, I was two-thirds—

Q. I mean from Priest's Point.

A. Well, I should judge four-sixths or two-thirds; a good half, a big half; three-fifths, that would be a little closer.

Q. And the usual time of taking a tow from Priest's Point to Blakely is how many hours?

A. Oh, about eight hours.

Q. Did you keep a log book on this trip?

A. Yes.

MR. RYAN: Will you produce that log book?

MR. GORHAM: Yes. Let the record show that Petitioner submits log to counsel for Claimant.

Q. What did you enter in this log?

A. This is the form of the company, more of a work sheet, what I use it for. I usually keep the details and such like, in a course book; giving the courses, time on different trips. But I have been using this more as a job book, to keep the time I arrive and the time I leave, and I put down there the conditions of the wind and glass and the number of hours run, etc.

Q. This is rather a work book which you have submitted to me which I have?

MR. GORHAM: Work memorandum.

A. Work memorandum; the majority of things that happen on the job.

Q. Now you also have a course book that you keep?

A. Yes sir.

Q. Will you produce it?

A. I cannot. The books are not turned into the office. That is a thing I keep, my own, so I can find my way around here in the fog. This boat was laid out in Lake Union for over a year, and it must have been on there. Then she was in the ship yard and they pulled her to pieces.

MR. GORHAM:

Q. You mean since December, 1918?

A. Yes. There is nothing on her.

MR. RYAN:

Q. Captain, you turned your course book over to your employer, did you?

A. No, left it aboard my boat; that is my own property.

Q. Now is it not a fact that you had that course book at the time of the trial of this other action in Kitsap county?

A. No sir. That is what I told you before, in your

office, that I didn't have it, and didn't know whether we could find it; the boat was at that time laid up, and I told you that right in your office.

Q. And in your course book you say you kept a complete log of weather conditions?

A. Yes sir.

Q. Hourly?

A. No, not hourly; may be two hours apart.

Q. How frequent would you make entries in your course?

A. About every change of watch; about every six hours.

Q. Who made the entries in your course book?

A. I did. If the mate was on watch he made his own.

Q. Who was your mate at that time.

A. This fellow over here.

Q. Do you know what entries he made in that time?

A. No. Just made about the time he passed Muckilteo light.

Q. Are these entries in your handwriting?

(Showing paper marked Claimant's Identification 2, to witness.)

A. Yes sir.

Q. When did you make these entries?

A. On the same date, December 11th.

Q. They were made at that time, were they?

A. Yes sir.

Q. Now from this entry, which I will read from Claimant's Exhibit 2, there is an entry dated "23:00" which means 11 p. m., the time you left Priest's Point with the *Claire*?

A. Yes.

Q. You have entries to the right "Stiff. S. 29-80."

A. 29-80 is the barometer.

Q. That is not high?

A. That was 13 o'clock; that is 1 o'clock.

Q. Then didn't you make an entry of the barometer reading?

A. No, 12 o'clock glass.

Q. At 12 o'clock you were at the edge of the flats.

A. Yes, about two miles out from Priest's Point.

Q. A very short distance.

A. Yes.

Q. You could have turned back readily from there?

A. Yes sir.

Q. Did you take a barometer reading then?

A. Yes.

Q. What is your barometer reading then, at that time?

A. 29-86.

Q. What would that indicate with reference to the weather?

A. A rising glass would indicate the weather was fair for that time of year.

Q. And on the 12th "06 Highlands Abeam" what do you mean by that?

A. 6 o'clock. That is the Highlands down here half way between Richmond Beach and Meadow Point.

Q. And what is that notation you have there?

A. Fresh easterly wind.

Q. How much of a rise was there in that glass from 11 p. m. to midnight?

A. A slight rise.

Q. How much would you call a slight rise?

A. Oh, four or five or six hundredths. Four or five hundredths.

Q. And a rise of that much would indicate how much of a change in wind velocity?

A. Oh, not a great deal.

Q. Would it be noticeable, captain, at all, a change that you might expect with a change of five hundredths?

A. No, you would not look for much change. Probably the atmospheric pressure is rising, and the glass has a slight tendency to stay as she is or get a little better with your glass rising.

Q. Then, when you arrived at one o'clock in the afternoon what was the state of the wind blowing, from the southwest?

A. Yes.

Q. Between one o'clock p. m. and 11 o'clock p. m. how much of a change was there in your glass?

A. Oh, just raise, slight raise.

Q. It made a slight rise?

A. Yes.

Q. Now you probably could not notice the change in the velocity of the wind, if you depended on the reading of the glass?

A. Oh, I depend on my judgment a little bit. I don't go solely on this glass. I can tell whether the wind is blowing forty or five miles.

Q. Every navigator does depend on his judgment. You looked out and in your judgment it was all right to go, and you did not pay much attention to the glass.

A. I did pay attention to the glass, as I put it down there.

Q. But it is a very slight change from 29 80 to 29 86?

A. Six hundredths of a rise.

Q. That you call a "Stiff south." What do you mean, southerly wind?

A. Yes.

Q. Then it must have been blowing, according to the indications of the glass, a stiff southerly wind?

A. Certainly not. You are about 12 hours off; you are reading 12 hours beyond.

Q. I am reading the record of your glass.

A. Yes.

Q. Would not that indicate weather conditions about the same?

A. Yes sir. That glass would indicate it here; but you see you have to change from a stiff south to a fresh east.

Q. And then with that you just relied upon your judgment, what you observed, and went out?

A. What I observed in the condition of the sea and the amount of wind at that time.

Q. And you made no notation between one o'clock in the afternoon and 11 o'clock that night, as to weather conditions.

A. No.

Q. In this instance you knew you had a capacity of cargo, didn't you, of lumber?

A. The scow looked like she had a fairly good load on her. I did not know whether capacity or not.

Q. A very valuable cargo, was it not?

A. I don't know. I was not notified as regards the details of the cargo. I did not know whether a valuable cargo or a cheap cargo.

Q. You say it was lumber containing about 290,000 feet?

A. I don't know. I am no tallyman. I have no way of estimating a load of lumber. I don't know how much.

Q. You did not know what you might be carrying?

A. I don't know. You could tell me five hundred thousand feet of lumber on that scow and I would not be able to tell.

Q. How long have you been towing scows?

A. Not all lumber scows.

Q. You said you had been towing scows and barges of lumber.

A. I have towed scows of lumber and coal and pig iron and junk, barges of everything, and I have towed logs here for the last eleven years, here on Puget Sound.

Q. You do not want to get in the evidence the fact that you could not form an estimate of the number of thousands of feet of lumber you have on a barge?

A. As a matter of fact I have no idea how much lumber there was on that scow.

Q. Had you ever towed this scow before?

A. No sir.

Q. Have you done towing for the Dominion Mill Company, of Port Blakely, before?

A. Towed some logs for them.

Q. Never towed any barge? How many men had you aboard the boat?

A. Seven, with myself.

Q. You never observed anything wrong, never made any investigation until you saw the lights go out?

A. That is the natural thing, that is done—

Q. That don't make any difference. Answer the question, yes or no?

A. No.

Q. Then you went back to your load and it was gone?

A. When the lights were gone I went back and looked at it and the load was gone.

Q. How frequently did you make entries in the course log?

A. You put down your course, time and weather; sometimes at every point you get your time for running, in case it should be foggy, you would have it when you run over that course again, you know how long it took from one point to another, when you change your course.

Q. Did not you consider this quite an important voyage that you made?

A. No more important than any other.

Q. When you were attempting to tow that scow with ten thousand dollars worth of lumber in the scow, didn't you consider it enough of importance to make a note of it in your log book or on your work sheet, either one?

A. Oh, I considered it as far as notifying the owner that the scow was doomed to get in with what I could. That is all that I knew I could do.

Q. And you got in and you turned that log of courses over to the owners, did you?

A. No, I turned this over to the owners.

Q. And you left the log courses on the boat?

A. Yes.

Q. On the tug?

A. Yes.

Q. Did you make any entry in your log book what you did in the way of trying to salve this?

A. I didn't do nothing in the way of trying to salve it.

Q. You did nothing at all?

A. Well, I say that the load was gone. There was nothing that I could do, only pull in what I had and get where I could save what was on the scow.

Q. When did you first notice any change in the weather conditions after you left Priest's Point, that indicated that the sea was getting pretty rough?

A. Oh, maybe around Edmonds, somewhere about there.

Q. You could have put into Edmonds could you not, there is a good place to anchor there?

A. No, there is no good anchorage.

Q. You could have gone in and gotten away from the storm?

A. I could have gone in if I considered the weather bad enough to go in with that scow, which I did not.

Q. You had nothing to do whatever with the salving of this load?

A. No.

Q. Did you telephone from Priest's Point to the office of the company?

A. In Everett, yes.

Q. At Priest's Point.

A. Yes.

Q. Did you have any discussion at that time as to weather conditions?

A. Mr. Horrocks was in the office there and I told him I was tied up at Priest's Point, did not figure it was fit to go and he says, is there any water in the scow and I says there is about three or four inches in her and cannot move it with the siphon. I said we are tied up here at the dock and we are going out of here on the tide if the weather permits, and he says all right.

Q. He could have reached you by telephone, could he, at Priest's Point?

A. Yes.

Q. Did you telephone him again after that?

A. No.

Q. And he knew about what time the tide would be high at the point you refer to, in your conversation with him over the telephone?

A. Yes sir.

Q. And you heard nothing further from him at all?

A. No.

Q. The Everett office is a branch of the Seattle office here, is it not?

A. Yes sir.

Q. Did you have any directions from the head office with reference to weather conditions, directing you to go out that night, or not to go out?

A. No.

Q. When you have a tow in charge?

A. No. You call up and they say all right, storm signals up, or the wind is blowing here or there is no wind here; and use your own judgment, stay there and don't go out or lose anything.

Q. Did you inquire if there were storm signals when you telephoned to the office in Everett?

A. No. I had only left there three hours before that and there were no storm signals then. It takes the weather bureau about 12 hours to notify anybody of the weather they are going to have, by signals.

Q. In other words the weather bureau is very inefficient?

A. I notice that the storm signals always seem to go up after the wind quits blowing.

Q. So you do not really pay much attention to reports from the weather bureau?

A. You pay some attention to them, but you don't make it a life and death proposition to hang your whole business on the weather bureau. You have to use your own judgment.

Q. You never made inquiries as to what reports the weather bureau had made as to the probable weather conditions when you telephoned the office in Everett?

A. No.

Q. Just told them you were tied up there on account of weather conditions, and then went out that night on your own volition?

A. Yes, on my own judgment.

Q. That is at 11 o'clock?

A. Yes.

RE-DIRECT EXAMINATION.

MR. GORHAM:

Q. Captain, does the reading of the barometer indicate the gauge of the wind?

A. You mean velocity?

Q. Yes.

A. No.

Q. And you could have a barometer 29 80 at one hour in the day with the wind at a certain velocity, and you could have the same barometer reading six hours later and the wind a different gauge, could you not?

A. Yes.

Q. How was the sea at the time that you discovered the light on the scow had gone out?

A. Oh, there was a fairly good sea on. There was no sea that scow should not have lived in, the scow should have gone through in that weather.

Q. Have you taken scows through similar seas before?

A. Yes, a whole lot worse than that, from Union Bay to Seattle.

Q. Many times?

A. Many times, loaded just as heavy with coal.

MR. RYAN:

Q. The change of the barometer does indicate a change in weather conditions, does it not?

A. Yes, probably within the next twelve hours.

Q. And the velocity of the wind is very apt to change with the change in the weather conditions, is it not?

A. I want to make this plain. You mean weather conditions?

Q. A change in the glass reading on the barometer, would lead you to expect changes in weather conditions?

A. Yes, within the next twelve hours.

Q. Change in the weather conditions means what?

A. May be either good or bad. If your glass is rising you will have good and if the glass is falling you usually get bad.

Q. And if it is low?

A. If it is low, at different times in the year—it all depends. You take a high along in August, June, July, you will get a glass as high as 30 40, and you will get half a gale that you could not lie at the docks.

Q. But the wind, you expect it to vary with the change in weather conditions to either good or bad?

A. Yes.

MR. GORHAM:

Q. This was a normal glass for December?

A. For that time of year, yes. You will find the glass down at that time. Very seldom goes much above 30.

MR. RYAN:

Q. There is one thing I overlooked. You say that in the month of December is an average month as far as weather conditions are for towing?

A. Yes, fairly good month.

Q. What do you consider one of the worst months for towing?

A. Right now, the month of March is about the worst month in the year.

(Witness excused.)

MR. GORHAM: I offer the identifications for Petitioner in evidence.

MR. RYAN: I also offer my identifications in evidence.

TESTIMONY FOR CLAIMANT RESUMED.

WILLIAM W. MITCHELL, a witness called on behalf of Claimant, being duly sworn, testified as follows:

MR. RYAN:

Q. Where do you live?

A. Seattle, at present.

Q. What is your business?

A. Lumberman.

Q. By whom are you employed?

A. Dominion Mill Company.

Q. What capacity?

A. Manager.

Q. How long have you been acting as manager of the Dominion Mill Company?

A. Manager and assistant manager since July, 1918.

Q. You were acting as assistant manager in December, 1918, were you, at the time this lumber was carried?

A. Yes sir.

Q. It is admitted here by stipulation that there were 1,085 pieces of lumber loaded aboard this scow *Claire*, and that there were 185 pieces, totaling 46,022 feet, which were delivered at Port Blakely from that scow. That there were 900 pieces, totaling 248,206, which were lost from the scow. What was the value of that lumber that you lost, the 248,206 feet, the fair market value of it, or value for your purposes?

MR. GORHAM: Which one do you want?

Q. I will put it this way: For what purpose were you buying this lumber?

A. For export.

Q. Had you a market for it at that time?

A. Yes sir.

Q. What grade of lumber do you export?

A. The highest grades out of the logs.

Q. Can you market in your export trade any lumber that has been damaged in any way on these orders?

A. No.

Q. Now for your export trade what was the value of this 248,206 feet of lumber which was lost?

MR. GORHAM: We do not admit it was lost.

MR. RYAN: I understand that.

A. I will have to refresh my memory on the value, values have changed in the last two or three years. I should say, off hand, \$7500 or \$8000.

Q. Then the value of this quantity of lumber was between seven thousand five hundred dollars, the quantity of lumber that was lost?

A. I would say roughly I would not care to bind myself to that exactly, without refreshing my memory as to the value at that date. I think you have the exact notes on that here.

Q. Here it is. (Handing paper to witness.)

A. According to this H list it would be about \$27.00 or \$28.00 a thousand feet. I should say in the neighborhood of \$7,500.

Q. That would be of a value of \$27.00 or \$28.00 per thousand feet?

A. Yes.

Q. Did you ever recover any part of that? Or, was there ever delivered to the Dominion Mill Company any part of that, any of these pieces which were lost?

MR. GORHAM: I object to that because under their own pleading delivery was made to them at the Canyon Lumber Company. The towage contract is another thing. They bought the lumber there at the Canyon Lumber Company.

A. No.

Q. Did the Pacific Tow Boat Company ever deliver to the Dominion Mill Company any part of that, any portion of that lumber which was lost, any of these pieces?

A. No sir.

Q. Do you recollect anything of the weather conditions on that night of December 11th?

A. It was rather stormy around that time.

Q. You were in Port Blakely at the time?

A. Yes sir.

Q. The Dominion Mill Company was operated a party to case number 5170 in the Superior Court of the State of Washington for Kitsap County, for the value of this entire barge of lumber, were they not?

A. Yes sir.

Q. And you were obliged and did pay for the entire cargo of lumber, were you?

A. Yes sir.

CROSS EXAMINATION.

MR. GORHAM:

Q. The loss off the scow, out of that loss there was some 834 pieces salvaged and taken to Everett, were there not?

A. I don't know.

Q. Were you not so advised?

A. No, I was never advised as to the number of pieces.

Q. You were advised that the lumber, that there was some of it at Everett?

A. There was some.

Q. Were you asked to come to get it?

A. I cannot recollect at this time.

Q. Were you not advised that lumber was not in condition to tow in a raft, under the weather conditions prevailing shortly after this accident?

A. I believe that was my information.

Q. So that in order to transport to Blakely they should have to put them on the scow, is that right?

A. Well, all depends on the weather conditions.

Q. Assuming the weather conditions—

A. Assuming the weather conditions for what period of time? They were lost in December, what time would that spread over?

Q. I am spreading it over whatever time you are spreading it over. I don't know the facts.

A. I cannot remember. It was away late in the spring that the lumber was salvaged.

Q. You are not claiming any damage for the cargo that was delivered to you at Blakely, are you?

A. No, I don't believe we are.

Q. And what would be the measurement of 834 pieces, approximately, for the 900?

A. I will have to refresh my memory on that.

Q. For the 900 pieces, 248,206 feet. What would the 834 pieces measure that were saved?

MR. RYAN: We are not admitting they were saved.

MR. GORHAM: I am asking.

A. It would be about \$6,900.

Q. I ask what would be the measurement of the 834 pieces?

A. About 18,000 feet.

Q. That is what I mean by average. One piece might contain 200 feet and another 500 feet. What would they average, the 834?

A. It runs about 275 feet to the piece.

Q. How much would the 834 pieces? That is a matter of computation. You say that is worth about how many thousand dollars? About six thousand dollars?

A. It would be about \$7,000.

Q. That would be the export value; what was the

market value on Puget Sound of 834 pieces? You say the export value would be about \$7,000, if it had been in good condition?

MR. RYAN: I object as wholly immaterial.

A. What you are trying to get at is the value, not export value?

Q. Yes.

A. Mr. Gorham, that is a very hard thing to answer. If you could find a market it might have been higher than the export. I have seen times that the market changes. You are carrying me back three years in the lumber business.

Q. You have been manager.

A. The market value of that same quality of lumber that same day was at least \$28.00 a thousand.

Q. The market value for domestic purposes, not export, is that that you testify to that had a value of \$28.00?

A. The market on Puget Sound was approximately \$28.00 a thousand for that class of lumber.

Q. The export market price was approximately the same?

A. Yes.

(Further hearing adjourned until March 17, 1921, at 10 a. m.)

SEATTLE, MARCH 17, 1921.

Present: MR. GORHAM, for the Petitioner.

MR. RYAN, for the Claimant.

WILLIAM W. MITCHELL, on the stand for further
CROSS EXAMINATION.

MR. GORHAM:

Q. You were advised, Mr. Mitchell, that there were some pieces of this cargo which had been salvaged and taken to Everett, and there impounded in a boom, were you not, by the Pacific Towboat Company?

A. Yes sir. I do not remember whether it was the Pacific Towboat Company. I did receive that information that there was a certain amount of it salvaged.

Q. From whom did you receive that?

A. Mr. McNealy.

Q. And he at that time was manager of the Pacific Towboat Company?

A. Yes.

Q. What did you do with reference to the minimizing of your loss after you were advised that there was a certain part of this property that had been salvaged?

A. I went down and looked it over, that is, just gave them a casual look, and I could see from that that the material had been on the beach, and the corners were rounded and badly chafed, rock chafed.

Q. You mean the corners at the end of the pieces?

A. The corners at the side; the four corners around and the ends also.

Q. And to what extent, if any, was the lumber damaged from its former sound condition?

A. It was a total loss to us.

Q. Was there any salvaged value in it at all?

A. There possibly would have been a salvaged value in it, but it would have to be remanufactured.

Q. Have to be reconditioned?

A. Remanufactured, which would have cost as much as the original cost.

Q. In other words, what you call remanufactured, these pieces were in the boom at Everett, the expense on that would have been in excess of its value after it had been remanufactured?

A. You are wording that rather peculiarly. It would have been the total value of it. It would have lost the original sizes, to remanufacture it.

Q. I am not trying to put anything in your mind. I don't want your conclusions, I want the facts. You say it was a total loss to you as export cargo. But did not it have a salvaged value other than for export cargo upon remanufacture?

A. No, nothing. There would be nothing realized out of it after your remanufacturing cost.

Q. What would it cost per thousand feet to remanufacture it, approximately?

A. At that time our cost was running in the neighborhood—roughly, I would not say the exact cost—but would run practically the value of the stick.

Q. Twenty-eight dollars a thousand.

A. Yes. Another issue is we did not handle—possibly only from five to seven per cent of our total cut goes domestic, and that is all it would have been good for.

Q. Now if it had a market at all it had a salvaged value. Did it have a market at all?

A. After it had been reconditioned?

Q. Yes.

A. Oh, there possibly would have been a market for it

after it was reconditioned.

Q. What would have been that market value?

A. That is hard to tell. There was no domestic demand for lumber at that time. 1918 was a very low state of things. That was the year the armistice, you all remember that.

Q. Well, that was the year of the armistice, yes, but did not the market begin to rise the first of January, 1919?

A. No, the market did not recover until the first of August, 1919.

Q. How much of it showed this damaged condition, as you saw it there in the boom?

A. All that I saw in the boom.

Q. How much was there there, could you estimate?

A. Why, I didn't count it, but I was told around 120 to 200 pieces.

Q. In the boom?

A. In the boom.

Q. Were you advised at any time after that that there were further pieces salvaged?

A. No. That information was conveyed to me also by McNealy that there was 120 at one time, McNealy told me, and 200 another time, that was the last advice I received from him.

Q. What was the dimension of this stuff?

A. 6x12 and 10x12, I believe.

Q. And various lengths?

A. It was heavier than 6x12, I know that.

Q. What were the longest pieces and what the shortest?

A. It was about 100,000 6x12 and 120,000 10x12 and 70,000 12x12.

Q. What was the maximum length?

A. Forty feet.

Q. Minimum?

A. Sixteen.

Q. You engaged the Pacific Towboat Company to tow this scow from the Canyon Lumber Company mill on the river side of Everett, to Port Blakely?

A. Yes.

Q. And you arranged with the Canyon Lumber Company to deliver to you this cargo free on board their scow at Everett on the river side, with the use of the scow to transport the lumber from Everett to Blakely?

A. Yes, in a general way you have got it. I could not remember the exact wording of my order.

Q. You did not pay any additional sum for the use of the scow from Everett to Blakely?

A. That was considered in the lumber value?

Q. That was in the order value.

A. Yes.

Q. So that you took delivery of this lumber at Everett mill as between you and the lumber company?

A. On a safe carrier, yes.

Q. Who was the judge of the seaworthiness of the carrier, that is, of the vessel carrying it?

MR. RYAN: I object as calling for a conclusion.

MR. GORHAM: I will withdraw that.

Q. Did not your order call for the scow *Claire*?

A. No.

Q. Did you know that the lumber was to be transported or loaded for transportation on the scow *Claire*, at that time?

A. No.

Q. Is it your contention now that the *Claire* was not a safe carrier?

A. Is it my contention that the *Claire* was not a safe carrier?

MR. RYAN: I object to that. The evidence now shows what condition the scow was at the time she was loaded and turned over to the libellant for towing. And the only evidence that the witness could give, would be the conclusion reached from the testimony as now given. He had no personal examination of the scow after it was loaded as she was at once taken in possession by the Pacific Towboat Company.

A. In my opinion, from what I have been able to hear, she was in a safe condition at the time the lumber was loaded.

Q. I did not ask you that—

MR. RYAN: That is a perfect answer, I submit.

Q. I ask you if it was your contention that she was not a safe carrier?

MR. RYAN: I submit the witness is answering the question in the only logical way it can be answered. Were you through with your answer?

A. Yes.

Q. I want to know what your contention is. Is it your contention that the scow was not a safe carrier?

MR. RYAN: I submit the witness has answered.

A. I have already answered.

MR. GORHAM: We object to counsel putting the

answer into the witness' mouth. That is not responsive to my question. I insist that he answer my question.

MR. RYAN: I submit that I have made no effort to put an answer in the mouth of the witness, as to what it might or should be. And I further object to the form of the question that it shows plainly upon the face that it is a question which does not call for any competent evidence. That its only purpose could be is an attempt to place the witness in a position to testify to something with which he is not familiar except through the testimony as offered in this case. And he has already testified and he has already answered the question submitted to him by counsel.

MR. GORHAM: We might go on and pile up these statements of counsel and it would not get us anywhere. If you advise your client that he shall not answer the question, I will be content with that record; but I want an answer to my question as to what his contention now is as to whether or not the *Claire* was a safe carrier. If you advise him he should not answer, I will rest with that.

MR. RYAN: For the purpose of making our part of the record clear, counsel for Claimant makes no such admission and does not so direct the witness.

MR. GORHAM: I am willing that you should if you want to.

MR. RYAN: No, I am advising him to further answer the question if it is within his ability so to do. I am only making the objection and comment of counsel for the protection of the witness. I think the witness answered the question fully and logically. If the witness is in a position to give any further answer or further explanation, he is requested to do so at this time.

MR. GORHAM: I am not quarreling with Mr. Ryan. I think Mr. Ryan is acting entirely within his rights, except I think he did make a statement there which the witness might adopt as his own, which was put in his mouth and answered. I do not even insinuate that Mr. Ryan had that intention when he made that statement. I want to eliminate from the record any appearance of any quarrel between counsel and myself, because I do not impute counsel's motives at all in any respect. But we insist on an answer to the question. And if the witness says he cannot answer it, all right.

MR. RYAN: Counsel for Claimant accepts the statement of counsel for Petitioner in the spirit in which it is

given. And I also wish to place in the record, that at no time in making objections or comments, which are placed in the record, did he have any intention of suggesting to the witness what his answer might be, the witness being an intelligent man, acting now and for a long time past as general manager of this Claimant corporation.

MR. GORHAM: I concede that.

Q. Now, Mr. Mitchell, you know whether or not, on behalf of your company you contend that the *Claire* was a safe carrier, and I wish you would answer the question, Is it your contention that the scow *Claire* was a safe carrier or was not a safe carrier?

MR. RYAN: I make the same objection as offered before. The witness has already answered. You may proceed.

A. (Former question read to witness.) I have answered that by saying that from hearsay I considered the *Claire* a safe carrier at that time.

Q. When you entered this order with the Canyon Lumber Company, the full order was to be delivered on two different scows?

A. That was not material.

Q. What was the contract price of the order?

A. It was \$24.00 based on H list. That according to H list at that time would make that run from \$27.50 to \$28.00 a thousand.

REDIRECT EXAMINATION.

MR. RYAN:

Q. Where are the mills of the Dominion Mill Company?

A. At Port Blakely.

Q. That is on tide water, is it?

A. Yes, it is on tide water.

Q. What is the business of the Dominion Mill Company?

A. Lumber manufacture.

Q. And what class of trade did they manufacture and sell for and to, generally?

A. Export trade.

Q. I believe you testified to the relative proportion which you manufactured for export and domestic trade?

A. Yes. Approximately 95 per cent export.

Q. And for what purpose had you bought this specially?

A. For export.

Q. I want to read into the record a copy of the order which was given by the Dominion Mill Company. We do

not seem to have the original here. Will you examine this and see if you recognize that as being a correct copy of the original order given the Canyon Lumber Company for this lumber in question?

A. It appears correct.

Q. Have you a correct copy of the order which you gave the Canyon Lumber Company for this bill of lumber?

A. Yes sir.

Q. Will you read that order, Mr. Mitchell?

A. (Reading) "Port Blakely, Wash., Nov. 21, 1918.

ORDER:

Canyon Lumber Company,
Everett, Washington.

No. 1 merchantable rough Douglas Fir lumber,
30,000 6x12, 16 to 32, loaded separate on scow.
75,000 6x12, 33 to 40, loaded separate on scow.
50,000 10x12, 16 to 32, loaded separate on scow.
100,000 10x12, 33 to 40, loaded separate on scow.
35,000 12x12, 16 to 32, loaded separate on scow.
35,000 12x12, 33 to 40, loaded separate on scow.

lumber to be graded as per H list grading rules. P. L. I. B. certificate to be furnished.

Lumber to be ready for delivery between the 1st and 5th of December. Lumber to be trimmed both ends. Price \$24.00 H list, f.o.b. your scow, your mill. No charge being made for barge hire.

(Signed) DOMINION MILL Co.

By Mitchell, assistant manager."

Q. That entire order was not loaded on the scow *Claire*, was it?

A. No.

Q. Such part of this order as you have previously testified was loaded on the scow *Claire*?

A. Yes sir.

Q. Did you have any talk with Mr. McNealy, the manager of the Pacific Towboat Company, at the time you placed the order for the towing of this scow, with reference as to how it should be moved and when it should be moved?

A. Not at the time when I placed the order.

Q. Did you at any time before the towing was done?

A. Yes sir.

Q. And did you have any talk with reference to the care that should be used?

A. Yes.

Q. Will you state what was said, and what you said to him?

MR. GORHAM: When and where and whose presence.

A. I don't believe there was any one present. Mr. McNealy and I were alone in his office in Seattle.

MR. GORHAM:

Q. Do you remember the day?

A. It must have been about the 10th of December, 1918. The weather was rather stormy and I think I said, I am a little afraid of the weather, but I need the lumber badly, but do not take any chances of losing.

MR. RYAN:

Q. What answer did McNealy make to that, if any? If you cannot repeat the words, give the substance.

A. I will have to give the substance, because Mr. McNealy has always worked—heretofore worked with us in order to arrange safe voyage. And, as I remember at that time he said that they would not take any chances if the weather was extremely rough. But he also recognized the fact, after my explanation of the ship being at Port Blakely on demurrage, that it was highly necessary that we get the lumber as soon as practicable to bring it over.

MR. GORHAM:

Q. Then there was pressure for immediate delivery a present necessity for immediate delivery, by reason of the demurrage charges running against the cargo, manufacturer or cargo delivery to the vessel?

A. There was urgent need of the lumber.

Q. For that reason.

A. Yes sir.

Q. And you were anxious to get the lumber, in order to avoid any demurrage charges that were not absolutely necessary?

A. Yes sir.

(Witness excused.)

G. N. SALISBURY, a witness called on behalf of Claimant, being duly sworn, testified as follows:

MR. RYAN:

Q. State your name?

A. George N. Salisbury.

Q. What official position do you hold?

A. I am in charge of the weather bureau of Seattle.

Q. Were you in charge of the bureau in December, 1918?

A. I was.

Q. What records are kept there with reference to weather conditions?

A. About as full records of the weather as could be kept on the instruments and our personal observations. We have the records of the barometer and temperature and wind and velocity.

Q. And you have here a letter, which has already been admitted in evidence as being what you would testify to with reference to the weather conditions here in Seattle on December 11th. Do you also have on file the weather reports of Everett, Snohomish County?

A. We have the records of Everett. They are kept as to temperature, rain fall, and the direction of the wind but not as to the velocity; no instrument for measuring the velocity at Everett.

Q. Is there any record of barometer readings at that time?

A. No record of barometer kept at Everett, but I have that record at Seattle.

Q. You have that included in this report which has been offered as Claimant's exhibit 1. Will you examine the records and state what the weather conditions were in Everett on the days December 11 and 12, 1918, as you took them from the records kept in the office of the United States Weather Bureau?

MR. GORHAM:

Q. Is that the original record?

A. This is the original record kept at Everett.

Q. In whose handwriting is it, the operator and observer there?

A. The observer there is David Olson; he is a school teacher.

Q. He submits original records?

A. He submits original records every month, records of temperature and rain fall and the direction of the wind and the state of the weather, whether clear, fair or cloudy. On these dates, the 11th and 12th, as far as the records show are identical with those at Seattle. There was rain on both dates, and the wind was from the south east and the weather was cloudy or rainy. That is about all the record shows as to the 11th and 12th.

MR. RYAN:

Q. From your report, what would be your opinion—I guess you have already stated in that report your opinion is that the weather conditions were the same in Everett as they were in Seattle.

A. I believe that they were.

Q. And that opinion would apply with reference to the barometer reading which you gave in your communication of date February 10th, 1919, which is now in evidence as Claimant's exhibit 1.

A. Yes sir, I believe the barometer would be the same, because the barometer is something that does not change much in a large district. Essentially the same all over Puget Sound. A little lower pressure towards the north, because that is really where the storm center is.

Q. Then, if anything, the barometer reading would be lower at Everett than Seattle?

A. If anything it would be lower, but not much lower.

CROSS EXAMINATION.

MR. GORHAM:

Q. The station at Everett is under your jurisdiction, is it not?

A. Yes sir, it is under my jurisdiction; I have the supervision of these records.

Q. You instruct them when to display storm signals?

A. The display station at Everett is something that is different. That is under the jurisdiction of the Portland office and the order for storm warnings are identical for Seattle and Everett.

Q. That is the invariable custom.

A. It is the custom, yes.

Q. And when Portland issues storm signals, the same order goes to Seattle and Everett.

A. It goes the same to Seattle and Everett.

Q. Examine that letter, please, which has been placed in evidence, and see if there is any indication of storm signal being displayed on the 11th of December?

A. The record of the Seattle office shows December 11th, was cloudy day, with some light rain; low level barometer; normal temperature. South wind prevailed, shifting at times to the southwest. Highest velocity 30 miles an hour from the southwest, and the average velocity was 18 miles an hour. It don't mention storm on that date.

Q. It would have mentioned it if there had been an order for storm signals?

A. If there had been one I think it would be mentioned.

Q. You see on the following day you mention storm signals, the 12th?

A. Southwest storm warning displayed on the 12th at 8:00 a. m. for ensuing 24 hours.

Q. From that statement you signed you are satisfied there was no storm signal order issued from Portland for the 11th.

A. There was no mention of it, therefore, I think there was none. There was no mention of it in our original record that I have with me.

Q. I wish you would refer to it.

A. If it was not mentioned it was not displayed. A southeast storm warning was ordered on the 10th at 7:30 a. m. and would remain up for 24 hours. That would take it into the 11th. There is no mention of storm warning having been ordered on the 11th.

Q. That storm warning signal would not have been displayed after the expiration of 24 hours?

A. Not unless continued by order.

Q. There is nothing in the original record of that date to show it was continued?

A. Nothing to show that the former warning was continued on the 11th, the order on the 10th was for 24 hours from 7:30 a. m.

REDIRECT EXAMINATION.

MR. RYAN:

Q. Would you have a notation in your records if it had been ordered continued, or would it just continue you?

A. If it had been ordered continued the record would be there.

Q. And was it automatically discontinued at the end of 24 hours?

A. Yes, it is, unless there is an order to continue it, we take it down.

Q. Can you tell from the records in your office and from your experience, under these weather conditions, what kind of sea it would be for making a tow?

MR. GORHAM: I doubt if the witness is qualified to testify, without a knowledge of the currents and tides.

Q. Have you such records that you could testify?

A. I just have a general understanding from towboat men, that a wind that is a little above 20 miles an hour, 20 to 25 miles becomes dangerous to towing, that is it becomes a hindrance, and with towing logs it will cause the logs to jump from the boom, the sea that is raised; it depends on how the sea has been in continuous action, if the wind should start up, it might be an hour or so before there would be enough wind to interfere with the position of the logs in the boom. The longer the wind continues—

Q. At that rate the more dangerous it becomes?

A. The more sea it would raise.

Q. And on the 11th of December, at about midnight, can you tell the velocity of the wind at that time?

A. The velocity of the wind at midnight on the 11th of December, at Seattle, was 13 miles an hour; that would be just midnight, from 11 to 12, and the direction is southeast; that is the time at the end of the hour the wind was blowing 13 miles.

Q. Give the velocity which was after that?

A. At 1:00 a. m. on the 12th, 15; next hour, 16; next hour, 15; next hour, 10; next, 8; next, 7; next, 8; next, 8.

MR. GORHAM:

Q. That is the windgauge record of the Seattle office?

A. Yes sir.

Q. On December 12th, 1918.

A. Yes sir.

Q. I will show you a paper which I will have marked identification F, and ask you if that is practically accurate as to the barometer reading at Seattle for the week ending December 16th, as compared with your records?

A. It is practically identical, as far as I can see. On the 10th and 11th the records are practically identical.

(Witness excused.)

PETITIONER'S TESTIMONY (Resumed).

CAPT. JEFFREY, recalled on behalf of Petitioner, testified as follows:

MR. GORHAM:

Q. Was there anything you could have done, to your knowledge, that you did not do, that would have avoided the loss of that lumber?

A. No. By the way the lumber was loaded on the scow, I done all that I could possibly do as regards to sounding her for the amount of water that was in her, and I used at that time, I would judge, all precautions regarding water and assuming what I could see of the scow that she was in good condition. I don't know that I took any unnecessary chances of losing the load of lumber.

CROSS EXAMINATION.

MR. RYAN:

Q. You did lose the load, didn't you, Captain Jeffreys?

A. I should judge it was from stress of weather or defective scow. All that I know, at 5:30 in the morning, the load was gone, but not through any misjudgment of mine.

Q. Then it was through stress of weather you say the load was gone?

A. I did not say positively through stress of weather. It might have been through stress of weather or defectiveness of the scow.

Q. But your first statement was that through stress of weather the load was gone at 5:30 in the morning, or five o'clock?

A. My statement through stress of weather or defectiveness of the scow, the load was gone.

Q. You don't know which it was then.

A. No.

Q. At what time in the morning did you discover the load was gone?

A. Between 5:00 and 5:30.

Q. You did not know at that time how long the load had been gone, did you?

A. I don't know how long part of it had been gone. I just know at that time the lights went off the top of the load where they were placed when we left.

Q. Did you see them at the time they went off?

A. Just about that time, or just a few minutes afterwards between times as you look back at the scow; when towing you look back at anything you are towing; and at night time we had lights to see if they are still burning.

Q. You did not see the lights go off?

A. I did not see them just exactly, at the minute.

Q. Were the lights made fast to anything on the scow?

A. You have an iron jack you drive into the lumber and then you lash the light on to this jack.

Q. Did you find the lights?

A. No.

Q. Never did find them.

A. No.

Q. You turned and went back at once and you found the lumber floating around?

A. Yes.

Q. And was she clear of lumber that was floating at that time?

A. No, there was a few pieces just floating away.

Q. The great majority of your load was back considerable distance, was it not?

A. It appears that way. You could not see back into the dark.

Q. So that it appeared as though the scow had dumped part of this load sometime earlier, didn't it?

A. Sometime previous I suppose.

Q. You had no trouble in going back right alongside the scow on account of floating lumber, did you? You had no trouble reaching the scow?

A. No, I had no trouble reaching the scow.

Q. You never did find where the lights had been dumped off?

A. No.

Q. So presumably these lights were dumped sometime before you noticed they were gone?

A. No great amount of time.

Q. What do you mean by no great amount of time?

A. Oh, I suppose not half an hour.

Q. How fast were you towing that night?

A. Oh, about two miles an hour.

Q. How far had you gone from the place of starting, Priest's Point, at the time you noticed the lights were gone?

A. Oh, I will say about maybe 16 or 17 miles, maybe 18.

Q. You were 18 miles from there and you had been gone how long?

A. Six hours and a half.

Q. And you were moving two miles an hour.

A. I said about two miles an hour. Maybe more or maybe less; all depends on the stage of the tide. Sometimes if you have the tide with you you can make four miles an hour. And with the tide against you you could not make two miles.

Q. How far is Muckilteo from Priest's Point?

A. The direction you have to come, you have to make two courses of it, you cannot come direct from Priest's Point to Muckilteo, you have to make a distance of five miles.

Q. You heard the testimony of the captain who came from Blakely that night to Everett, that he noticed or ran into a lot of floating timber off Muckilteo, didn't you?

A. I don't know that I heard him say Muckilteo, I heard him say sometime between the time he left Port Blakely and before reaching Everett, he ran into floating lumber, and he had to dodge it all the way along.

Q. Assuming it was Edmonds, how far is Muckilteo from Edmonds?

A. About 12 knots.

Q. You mean Edmonds is 12 knots from Priest's Point or Muckilteo?

A. Muckilteo.

Q. And Muckilteo is five miles from Priest's Point?

A. Yes.

Q. Now you had gone 18 miles, you say, when you lost the load?

A. Seventeen or eighteen.

Q. Where were you at that time?

A. About Richmond Beach.

Q. How far distant is Richmond Beach from Edmonds?

A. About three miles south of Edmonds.

Q. I believe you testified yesterday that the usual time for making a tow from Priest's Point to Blakely or Everett to Blakely is eight hours?

A. About eight hours depending on weather conditions and tide.

Q. What is the mileage, what is the distance from Blakely to Priest's Point?

A. Oh, I would say about 28 miles.

Q. Twenty-eight miles.

A. Yes.

Q. And what portion of the distance had you covered when you noticed you had lost your lights?

A. About 18 miles, 18 or 20 miles.

Q. And you were right off Richmond Beach.

A. Yes sir, just about there.

Q. You had been making about the same headway the entire trip after you left Priest's Point?

A. Well, just about. From Edmonds you get a heavy tide, the tide is different. You have a body of water coming down from Penn's Cove, Skagit River, Snohomish River from the bay inside of Whidby Island, comes down to Edmonds, and then meets a body of water that flows out of Admiralty Inlet toward Townsend.

Q. Ordinarily takes considerable longer to make the distance from Richmond Beach to Blakely than it does from Richmond Beach to Everett, don't it, going from Everett to Blakely?

A. No, when you get to Edmonds, you have a head tide at that time, and we had a head wind.

Q. Then how much longer would it have taken you to have gone to Blakely under those conditions?

A. I cannot be exact on that. The wind makes a difference on your tow and on the surface of the water. Lots of times you have a fair tide and you have a head wind and it affects the surface of the water considerably and consequently gives you a tendency to make head tide as well as head wind.

Q. Then you were making the best speed you possibly could that night, were you?

A. Yes sir, without driving anything to pieces, any machinery or anything like that.

Q. You traveled six and a half hours and made 18 miles.

A. Yes sir.

Q. And then it would have taken you how many more hours to make Blakely from where you were at the time you discovered the lights were out?

A. Not any more than about three and a half hours, something like that.

Q. Making about ten hours on the trip.

A. Yes.

Q. You stated you were making about two miles an hour?

A. I stated about two miles an hour.

Q. And 29 miles from Everett to Blakely.

A. Yes sir.

Q. That would have taken you how long?

A. I said that the average trip from Priest's Point to Blakely is about eight hours. If I had a northwest wind behind me and a fair tide from Everett, I would probably make it in six hours. If I have a head wind probably take me ten hours.

Q. And you think about the average trip is eight hours.

A. On an average in fair weather.

Q. What was the occasion of taking you so much longer this time?

A. I don't consider two hours—

Q. Never mind what you consider. Tell me why it was you were taking extra time on this trip.

MR. GORHAM: I object.

A. Had a little head wind.

Q. In other words you had bad weather.

A. Not bad weather, a little head wind.

Q. You were the captain of that tug were you?

A. Yes sir.

Q. Is it customary for the captain to be on watch from one until six o'clock?

A. It is customary to be on watch any time that he feels that things are not exactly as they should be going, subject to call at all times.

Q. And you had not been called had you, on this night, to take the watch?

A. No, I had slept all afternoon at Priest's Point and I considered that I had better stay up in the evening.

Q. You were called that evening?

A. Well, night time, evening.

Q. Now is it not a fact, Captain, you were on watch because you considered the weather to be dangerous and it

needed you there to attend to things?

A. No, it did not exactly need me there, but when you have some responsibility on your shoulders, it has a tendency to give you a little worry. Lots of people on these tow boats tell you that they do not worry, don't worry them with a tow. It is part of the business and naturally there is a tendency to worry a little.

Q. The conditions were such that you felt it necessary for you, the weather conditions were such that you felt it necessary to be on watch at hours when it was not customary for you to be on watch as captain?

A. It is customary for me to be on watch any time.

Q. Yes, I understand. But these are not your regular hours of watch, from one to six?

A. My regular hours are 24 hours a day.

Q. You do not mean to say you stand watch 24 hours a day?

A. No, I don't stand watch, but I catch a nap once in a while between times.

Q. That is the way you want to answer that is, that you are on watch all the time?

A. Yes, on watch all the time.

REDIRECT EXAMINATION.

MR. GORHAM:

Q. Did you retain your same relative position to the scow throughout this tow, from the Canyon Lumber Company to Richmond Beach?

A. Do you mean change of position of the boat or position of the scow?

Q. Did you retain the same position, the same end of the scow going first from the Canyon Mill clear to Blakely?

A. I kept the same end ahead all the time.

(Witness excused.)

PETITIONER'S TESTIMONY (Resumed).

HARRY GARNER, a witness called on behalf of Petitioner, being duly sworn, testified as follows:

MR. GORHAM:

Q. What is your business?

A. I have been working on tugs and steamers.

Q. How long?

A. Five or six years.

Q. What capacities?

A. Always in the deck department.

Q. Were you a member of the crew of the tug *Defender* December 11th and 12, 1918, on the voyage from the Canyon Lumber Company mill?

A. Yes, I was.

Q. You remember the circumstance of going into the mill and taking up that scow and starting off with her down the river?

A. Yes, I remember it.

Q. Now the scow was loaded when you got there?

A. Yes sir.

Q. It lies in a slip, does it not?

A. Yes, it lies in a notch cut into the wharf there.

Q. And did you come up the river or down the river after getting hold of the scow?

A. I don't just remember which river we came up; we must have come up the old river.

Q. As you approached this scow lying in this little offset in the wharf, did you approach it from down the river and come up the river toward it?

A. Yes sir.

Q. So that you approached it on your starboard side?

A. Yes, to be sure.

Q. On the tug's starboard side.

A. Yes.

Q. How did you make fast to it, do you remember?

A. Well, put a line aboard of her first and got a chance to look her over.

Q. Where was your bow relative to the point of the scow up river?

A. We were both in the same direction; our bows pointing in the same direction.

Q. Was the end of the steamer as far up as the up-river end of the scow—that is what I mean?

A. No.

Q. Could you see any one on the scow?

A. I did not take notice.

Q. You just came alongside; you did not notice any name.

A. No, not at that time; I was busy.

Q. What method did the captain indicate that he was going to take in taking the scow out, was he going to use a bridle?

A. Yes, we intended to use a bridle, but the bridle parted so that we had to put a spring line on.

Q. I show you a rough diagram of a tug and a scow

alongside. Now where would be your spring line. Just mark it there?

A. This would be what we call our stern line.

Q. Mark that line S.

A. (Does so). This would be our spring line, which would come over aft on the starboard side back to the stanchion and here the headline.

Q. Mark the spring line with an Sp.

A. (Witness does so.)

Q. And headline here.

A. Yes. (Witness marks headline.)

Q. Did you put these lines out and make her fast?

A. I helped in the operation of putting them out; there were two of us on deck.

Q. In this position, with these lines out, the scow was moved from its berth at the dock by the tug *Defender*?

A. Yes.

Q. And were the relative positions of the lines changed afterwards going down the river?

A. They were not changed until we got to Priest's Point.

Q. Did you put the stern line out?

A. Yes, I put the spring and stern line out, and as I remember the other deckhand put the headline out.

Q. Do you remember, as you put the stern line out, or at any time after that, whether or not you saw the name at that end of the scow?

A. Yes, I seen the name at that end of the scow, in tightening up the stern line in rounding the bend.

Q. The name *Claire* was that?

A. Yes. We stopped down there to shorten up our lines, and we shortened up on our headline and stern line, and I had to step over to the starboard to shorten this line up and I noticed there was a name on there. A circle there with a different word; I don't know, S. C. something on there.

Q. As you went down the river from the mill, how far did you get down before it was necessary to tighten up your lines to take in your slack?

A. That is hard to say. As well as I remember we must have gone between a quarter and a half mile, something like that.

Q. You were still inside of the mill?

A. Yes.

Q. And what was the occasion would you say of the slack being there?

A. Well, the natural effect on the line after it is once

tightened; of course it is natural for it to slack after it has a strain on.

Q. Now after taking in this slack, do you remember where you stood or what you were doing?

A. Yes, I was up on that load on the scow.

Q. What for?

A. For the purpose of watching for anything that should come up the river, such thing as another boat coming up the river, a person wants to see him, and to keep an eye on anything.

Q. To be a lookout.

A. Sure, that is the idea.

Q. And how soon after leaving the berth at the mill did you go up on top of the scow load?

A. Just as soon as we tightened the lines up, my part of the tightening up; the idea was that we would stop the boat and take in some slack on the stern line and then go ahead; and then slack on the headline. I went back and tightened on the stern line and then I climbed on top of the load immediately.

Q. Where was the scow then, relative to the right bank of the river?

A. I would not say that it was exactly mid channel, but we were not very far off from mid channel.

Q. And had the scow at any time previous thereto been near to the bank of the river?

A. No, I don't think so.

Q. After that did it get near the bank of the river?

A. No, it did not, until we tied at the dock—it was nearer when we were at the dock.

Q. You heard the captain's testimony here yesterday?

A. Yes sir.

Q. Did you hear him testify that the trees on the bank of the river brushed the scow?

A. You understand there is trees, the wash of the river washes the roots away, and they hang out over a good deal, further than the length of the scow.

Q. Was there any contact with the trees on the bank of the river?

A. Oh yes, naturally brushed the trees; on a boat running light we will do that; of course we did. I don't know that I could go down in a skiff without brushing something.

Q. Did the scow hit the bank in any way?

A. No, it did not.

Q. Did the scow at any time, after leaving the mill until it reached Priest's Point, come in contact with any obstruction, to your knowledge?

A. No, it did not.

Q. You say in shortening in the lines, the slack, you stopped the momentum of the steamer?

A. We would, yes.

Q. That would give her the appearance of drifting, to a man on the bank?

A. I don't know; it may. I never remember taking an observation.

Q. Now did the tug maintain the same relative position to that scow at all times thereafter until she got to Port Blakely? In other words, what we call the stern end of the scow, the same relative position to the tug as it was when you first took her out. Did you retain that?

A. Until we got to the point. We went ahead on the tow line after we got to the point.

Q. I will withdraw that question. Was the end of the scow, the opposite end on which the name is, always forward end of that scow in towing, either alongside or by line?

A. Yes, it was.

Q. All the way from the mill to Blakely?

A. Yes, I think we put our bridle on just the way she was lying at the dock.

Q. Where did you put the bridle on, at Priest's Point?

A. Yes.

Q. Did you see the captain sounding the well there on the scow at Priest's Point?

A. I seen the operation of sounding; of course I was not on watch.

Q. Did you see him sound the well there at the mill?

A. Yes, we sounded at the mill.

Q. What was the condition of the scow at Priest's Point at 11 o'clock at night on the 11th of December, as compared to her condition when you left the mill?

A. According to my knowledge it was the same.

Q. What was the state of the wind and sea at 11 o'clock, after leaving Priest's Point?

A. That is pretty choppy. I was not always watching the weather from my position on the boat.

Q. Was there a heavy sea on?

A. Nothing heavy.

Q. Was there a heavy sea running at any time between 11 o'clock at night and the next morning when you found the load was gone?

A. Not what you would call a heavy sea; a few small whitecaps out on the water, but nothing that a man would be afraid to go out in a rowboat in, like that.

CROSS EXAMINATION.

BY MR. RYAN:

Q. I am marking on this diagram the tug and the scow.

A. Yes.

Q. Now, when you left Priest's Point, you put the bridle on which end did you hook on to?

A. Well, we were in the same relative position with the scow at the time we put the bridle on.

Q. Which end would that be?

A. It should be the upper end.

Q. What hours were you on watch that night?

A. I was on watch when there is anything to do on deck.

Q. When was your attention first called to the fact that the scow had swamped?

A. Swamped?

Q. Yes.

A. It was on the morning watch; just what time it was I don't know.

Q. And was it daylight?

A. No, not yet.

Q. Who called it to your attention?

A. I think the captain did first.

Q. Was he on watch at the time?

A. He was up and around, yes; probably he was down in the galley at the time I first noticed him.

Q. What did you notice?

A. I did not notice anything at all; I was told about it.

Q. Who told you about it?

A. The captain.

Q. You saw him and he told you down in the galley?

A. I said, at the time, he was probably in the galley. I was steering at the time.

Q. You could not see from the galley?

A. According to what point it is.

Q. Could he see the scow at 500 feet?

A. He could if he stood in the doorway and looked back.

Q. And you think that was where he was?

A. I don't know where he saw it.

Q. You know he was not on watch?

A. He was not on watch.

Q. What time did he go to bed that night?

A. I do not remember him going to bed at all.

Q. Do you know that he did not go to bed?

A. Well, he was up about the pilot house; I did not see him go to his room.

Q. Were you in the pilot house all night?

A. No, I was not.

Q. What time were you in there?

A. I went up to spell him at the wheel; I was up there several hours talking to him.

Q. And what hours were you there?

A. I don't remember; it was the morning watch.

Q. Do you want to swear he did not go to bed at all that night?

A. I will swear he did not go to his bed room and go to bed. He might sleep in the coal bunkers, something like that.

Q. He did not generally sleep in the coal bunkers?

A. He did not generally sleep there.

Q. What would be the occasion of staying up all night?

A. The idea is very simple to steamboat men. Whenever you get a chance to sleep, they usually sleep. I think he probably slept in the afternoon as he says; I did not see him around.

Q. Did you see him go to his room in the afternoon?

A. Well, I never seen him anywheres; and I do not think he was ashore anywheres, and he must have been sleeping.

Q. You slept during the afternoon?

A. I slept some.

Q. Did you go to your bunk?

A. Yes sir.

Q. You do not know who first reported the scow sinking, do you?

A. Probably the captain.

Q. You don't know, but probably the captain.

A. He is the one that reported to me or told me, he mentioned it.

Q. What were the names of the other men who were aboard the boat?

A. I do not remember all of them; I remember the chief.

Q. Who was that?

A. I believe it was Hemrick; I don't know the others; they change so often.

Q. Did you have anything to do with keeping the log on this boat?

A. Well, with reference to taking courses and the time of passing different points, and sometimes weather, yes.

Q. You made entries, did you?

A. Yes.

Q. And where was that kept?

A. Made entries on paper and then captain entered them on the book.

Q. Have you any memorandums that you made?

A. No, I have not.

Q. Did you ever see the log book after this?

A. That is hard to tell; that is quite a while ago.

Q. It is not hard to tell, you either did or did not.

A. I may have seen it and may not.

Q. You have no recollection?

A. No recollection, not since.

Q. You did not testify in the case of the Canyon Lumber Company against the Dominion Mill Company, at Port Orchard?

A. No.

Q. Where do you live?

A. Everett.

Q. What is your business?

A. Working aboard steamers.

Q. By whom are you employed at the present time?

A. Not employed at the present time. Have not been for the last year; I have a ranch.

Q. Where were you last employed?

A. Last employed by Johnson.

Q. Where were you on the boat when the captain told you of the swamping of the scow?

A. Well, when he said the lights were out I was in the pilot house at that time.

Q. You and he were both in the pilot house?

A. Yes.

Q. What makes you think you first heard or saw of it down in the galley?

A. I will tell you now. He came from the galley and he came up and he says, the light is out, we will have to go back and see what is wrong; she seems to be towing all right, but we will go and see anyway. And I came to the conclusion he must have seen it down there, the reason he came up.

Q. Did you carry pumps on the boat?

A. Yes, a siphon pump that we had bolted to the deck that we used.

Q. Could you have used it if you had gone alongside of the scow, if you had noticed her filling with water? Could you use that deck pump to pump out the compartments?

A. The deck pump?

Q. Yes, whatever it is.

A. We could use the siphon; there was no use then.

Q. It was too late then. Do you know how long it would have taken to fill with water?

A. I have no idea.

Q. Do you not know how long she was filling with water?

A. Could not be very long.

Q. Why do you say it could not be very long?

A. Because a man looks back when he is towing every so often.

Q. How often did you look back on your tow?

A. Every twenty minutes, anyway.

Q. Twenty minutes before that had you looked back on the tow?

A. I had been looking every twenty minutes; I might have looked back fifteen minutes before that.

Q. Do you remember looking back 20 minutes before it was reported that the lights were out?

A. It might have been 10 or 15.

Q. And you saw the lights?

A. Yes.

Q. Did you go back at once when you discovered the lights were out?

A. Yes sir, we went back.

Q. And going back did you find any lumber drifting about where the scow was?

A. Several pieces, not to exceed a dozen.

Q. And you heard the testimony here that there was 900 pieces lost?

A. Yes sir.

Q. And how many pieces did you find around the scow, about?

A. I didn't count them, they were in the water there, but there could not be more than a dozen that I seen myself.

Q. And the rest of the load had gone, been left away behind?

A. Well, that went behind when carried away probably?

Q. Did you ever find the lights?

A. No.

Q. Did you go back to try to find them?

A. No.

RE-DIRECT EXAMINATION.

BY MR. GORHAM:

Q. You could not see very far at that time, could you? At five o'clock on a cloudy morning in the month of December on Puget Sound, it is not very light, is it?

A. I could not say as to how light or bright it was that morning, but you could not see very far.

Q. In looking back could you tell whether the scow was making water or not?

A. No, you could not see anything but the lights at that time.

MR. GORHAM: I offer this diagram used by the witness in evidence.

Paper marked Petitioner's Exhibit G, filed and returned herewith.

Q. What did you mean when you said the captain was not on watch, did you mean that he was not in the pilothouse?

A. He was up all right; I meant he was not in bed.

Q. You said he was not on watch, what did you mean by that?

A. Well, on some boats we observe this watch business, six and six.

Q. You mean stationed at the wheel?

A. Yes, that is what I mean.

BY MR. RYAN:

Q. Are you licensed to attend the wheel?

A. No.

Q. You were at the wheel at the time the lights were out, were you? How long had you been at the wheel?

A. Not more than three quarters of an hour, something like that.

Q. Whom did you relieve at the wheel?

A. Captain Jeffreys.

MR. GORHAM: The license does not call for a licensed man at the wheel on this steamer.

(Witness excused.)

Hearing adjourned, to be resumed by agreement.

SEATTLE, JUNE 22, 1921.

Present: MR. GORHAM, for Petitioner.

MR. DESMOND, for Claimant.

TESTIMONY FOR PETITIONER. (Resumed.)

T. H. HAYLEY, a witness called on behalf of the Petitioner, being first duly sworn, testified as follows:

BY MR. GORHAM:

Q. What is your business?

A. Supervisor for the Pacific Lumber Inspection Bureau.

Q. What are your functions as supervisor?

A. To hire my inspectors, who do the work under me; see that they are grading the lumber correctly, and issue certificates on their work.

Q. This is export lumber?

A. Export and domestic.

Q. For what mills on the Sound?

A. In the Northern District, which takes everything north of Seattle to the B. C. line.

Q. How many mills in your jurisdiction, approximately?

A. Twenty or more.

Q. How long have you been in this business?

A. With the Bureau about 16 years, I judge, offhand.

Q. In various capacities?

A. In this one capacity.

Q. What were you doing prior to that?

A. Inspecting.

Q. Lumber?

A. Lumber.

Q. Where?

A. Port Blakely, Tacoma Mill Company and various others.

Q. Do you remember being called to go down to Everett in the year 1919?

A. Yes sir, a little over two years ago.

Q. To inspect some timbers that were impounded there, said to have been lost off the scow *Claire*?

A. Not to inspect.

Q. I mean—

A. Pass my judgment on them as they appeared.

Q. That is what I mean.

A. Yes sir.

Q. At whose request did you go down there, or suggestion?

A. Mr. Hambridge of the Canyon Lumber Company.

Q. Do you remember the month you went down there? The loss of the *Claire* was in December, 1918, as shown by the testimony and the pleadings. With respect to that month of December, approximately when was it?

A. It was in the spring, about two years ago; probably January or February; I would not say to the date, I am not sure about that.

Q. Where were the timbers that you went down to examine?

A. The timbers were lying in the boom, between the Everett Improvement Company and the City Dock.

Q. On the Bay side of Everett?

A. On the Bay side of Everett.

Q. In whose charge were they, if you know?

A. No, I do not.

Q. Who pointed them out to you as the timbers that had been dumped off the scow *Claire*?

A. Why, Hambridge, we went down there together.

Q. What was the condition of these timbers, as you saw them at that time, as regards their being in a damaged condition or otherwise?

A. Why, the timbers were a little wore, and needed a little trimming, for instance take a man with a cross-cut saw and trim the pieces, square the timbers, where one had struck another and taken the corner off probably two or three or four feet, it would have to be trued if you wanted to ship it. They were in pretty good condition; I would consider they were fit to ship. Some of the corners were nosed a little, but nothing much.

Q. They would not require to be trimmed the full length, but just the corner?

A. One or two or four feet, whatever the chunk was taken off.

Q. You would consider that you could pass this and issue your usual certificate of inspection for export trade?

A. If in loading they turned out what they appeared to be, taking off what I say, I do not think I would have any hesitancy.

Q. What percentage of the sticks, as you saw them there impounded in the boom, would require that reconditioning?

A. That is pretty hard to say.

Q. I am asking simply your approximate, best judgment, if you have any memory of it.

A. Oh, I do not think there was one per cent.

Q. If there were 200 sticks, that would make only two sticks?

A. Yes.

Q. Would there be only two sticks that were damaged?

A. There were very few sticks in the boom damaged in that way.

Q. Was there any other damage to them that you saw?

A. One, if I remember right, was chafed quite considerably. I think it was a hexagon and had been pounded more than the square timbers, because its edge was lower than the other squares.

Q. Do you remember the dimensions of these timbers?

A. Six by twelve, I think; large square timbers.

Q. What would have been the approximate labor required to recondition the timbers damaged as you have explained, that is, taking them as you have explained, and the requirement to recondition as you have explained it, what would it amount to in labor, to do that work?

A. One man could do that nicely in one day; one day's pay for labor.

Q. For one man?

A. Yes.

CROSS EXAMINATION.

BY MR. DESMOND:

Q. Your best recollection, Mr. Hayley, was that this was some time in January or February, 1919?

A. Yes, along there, in the early part of the year; a couple of years ago.

Q. Could you give us an estimate of the quantity of timber that was there?

A. No. Because I was not asked to. I was just to go down and glance over it and look at one point; it was a round loose boom.

Q. Do you know from whence this timber was assembled.

A. No, nothing whatever.

Q. The sticks that you speak of at that time were lying in the boom in the water.

A. Yes.

Q. And assuming that this scow had lost her load on December 12th, 1918, the sticks would have been in the water up to the time you saw it?

A. Yes sir.

Q. How long a time did you spend inspecting the timbers?

A. Oh, probably three-quarters of an hour, not to exceed that.

Q. And you made no memorandum at the time, and you are testifying now from memory?

A. Purely from memory.

Q. And do I understand that these several sticks that you say were injured, were only damaged at their ends?

A. With the one exception that I remember, it looked as though it had been dragged across the others and frayed it considerably, but the rest of the timbers were in pretty good condition, just the ends, nosed a little.

Q. But as I understand it, the sticks that were damaged, in order that they might be put in good, merchantable condition and pass inspection, they would have to be individually retrimmed?

A. Yes sir.

Q. That would have to be done by hand, with a cross-cut saw.

A. Sure.

Q. And that would necessitate their being hauled out of the water to do it.

A. No, not necessarily. You see, you can put a plank across several and push the one out you want to saw the end, and you have a chance to saw it that way.

Q. And you would have a number that would have to be so treated?

A. Yes.

Q. And you do not know how many sticks were in this boom?

A. No.

(Witness excused.)

CAPT. HENRY P. BARTMAN, a witness called on behalf of the Petitioner, being duly sworn, testified as follows:

MR. GORHAM:

Q. Your full name?

A. Henry P. Bartman.

Q. Your occupation?

A. Master mariner.

Q. How long have you been a master mariner?

A. Thirty-two years.

Q. In what trade?

A. Well, before I came to this country I was in big oil carriers and freighters on the Great Lakes.

Q. And you came to Puget Sound when?

A. Came here in 1903.

Q. What trade have you been in as master mariner?

A. Logging, towing booms—

Q. Towboat trade.

A. Yes sir.

Q. What is your license?

A. Unlimited master's license on the Great Lakes and Puget Sound.

Q. You are in the employ of the Pacific Towboat Company?

A. Yes sir.

Q. You were in their employ in December, 1918?

A. Yes sir.

Q. You are master now of what?

A. *Chickamauga*.

Q. Were you master of the *Chickamauga* at that time?

A. Yes.

Q. Is that a tug of the Pacific Tow Boat Company?

A. Yes.

Q. And was then?

A. Yes.

Q. I will ask you if you remember the accident that happened to the tow *Claire* when the *Defender* was towing her from Everett to Port Blakely in December, 1918?

A. Yes sir.

Q. You remember the circumstances?

A. I remember.

Q. When did you first hear of the accident?

A. Well, Mr. McNealy came and told me to go out to Ballard immediately, and that the *Defender* was lying out there with a scow that had lost the load off of.

Q. How soon was that after he had met with the accident?

A. I could not tell you how long it was. McNealy told me to go down to Ballard and you will meet with the *Defender* with a scow load of lumber, that they had spilled most of it coming in from Everett.

Q. Did you go?

A. Yes.

Q. With the tug *Chickamauga*?

A. Yes.

Q. What did you find the condition of the tug and scow to be when you arrived there?

A. When I got there the tug was tied up to the dolphin and the scow was hanging to her behind.

Q. Where is the dolphin?

A. It is situated just north about a thousand feet of the main channel that goes into Ballard.

Q. That is in Shilshoal Bay, is it?

A. Yes.

Q. Sheltered from the southeast and southwest winds?

A. Not from the southwest winds but from the southeast winds.

Q. What time of day did you arrive, approximately, was it in the morning or night or in the day?

A. I think it was in the forenoon, I would not exactly say.

Q. What was the condition of the scow as you saw her there?

A. Well, the scow was full of water, and she was lying with the end of the bow, we will call it the starboard side, was under water probably eighteen inches, and the timbers, as near as I can remember, were about five tier high on that side, on the back end of it, and about two tier on the front end. They would break joints as you go along, you know; and about half way across the scow, on the back end, and

on the front end about three-quarters of the way across she was under water; the back end on the port side was under water, probably three or four inches, something like that; but where I laid with the tug, near the forward corner of the scow, that was out of water from six to eight inches.

Q. Would that be the port stem or port stern?

A. Port stem, port bow.

Q. How did you approach her when you came up to her? Did you go on the scow personally?

A. Yes.

Q. From your tug?

A. Yes.

Q. How did your tug approach?

A. Circled around, laid right alongside, my pilot house right where her bow is; that is where the cleet is to make fast on the tug and also the piece on the scow is right there

Q. That is the towing bitt.

A. Yes, that is the towing bitt.

Q. That would be the port bow, what we might call the port bow of the scow?

A. Yes sir.

Q. Did you notice any name on the scow anywhere?

A. Yes, I seen the name.

Q. Where was the name?

A. Right under me on the port bow, right there, about ten feet as you came alongside, it was right in front of me.

Q. Was that on the end or the side of the scow?

A. That was on the side.

Q. Did you see the name on either end of the scow?

A. No sir.

Q. The stern of the scow was under water?

A. Yes, about six inches of one corner under and about 18 inches on the other corner.

Q. How long were you on the scow?

A. Oh, I should judge two hours or two and a half, something like that.

Q. What were you doing?

A. We took peaveys and took the timbers over and trimmed them over so as to get her on an even keel.

Q. Did you succeed in getting her on an even keel?

A. Yes, close as we could.

Q. Who was with you?

A. My son was with me; my crew was away on account we were expecting to have a vacation.

Q. From the *Defender*, I mean.

A. The mate was there from the *Defender* and the deck hand, and the captain of the *Defender*. There was five of us on the boat altogether.

Q. How were the lines made fast from the scow to the dolphin or tug?

A. The scow was lying on her bridle; this comes from each corner of the scow and comes to a center.

Q. Some 15 or 20 feet forward?

A. The bridle is about 65 or 70 feet in length.

Q. And that was made fast to the towing bitts on the scow.

A. Yes sir.

Q. On which end of the scow with reference to the name on the side that you say you want alongside of?

A. Passed right over it, or very near over the name.

Q. Was that on the forward end of the scow where the bridle was made fast?

A. Yes.

Q. And the hawser leading from the bridle was made fast to what?

A. To the tow bitts on the tug.

Q. At that time.

A. Yes, she was lying there hanging to the tug.

Q. Just in that way.

A. Yes, as near as I can remember.

Q. Have you any doubt in your mind?

A. No. I know that is the way she was hanging.

Q. I don't want any question about it. If you are guessing I want to know that. And if you know, we want to know that you know.

A. Yes, it was there hanging to the tug.

Q. Did you have occasion to put on one of the hatch covers?

A. I put one on that lay right in front of my pilothouse door. It was hanging on a chain three or four feet long. It was what we call counter-sunk hatch; you put it on and stepped on it; I did that so that we would not be backing into it when working about the deck.

Q. What was the condition of the other hatches?

A. Under water; I could not see them.

Q. Open?

A. I could not tell you; I could not see them.

Q. Why could you not see them, was there a load over them?

A. On the back end there was and on the other end I did not pay attention to it.

Q. Did you see any damage to the scow on the stem, on either the port or starboard bow, or on the stem of the bow, the forward end?

A. There was nothing that I could see on that particular corner, that is all I could see.

Q. Any seams open there that you observed?

A. I did not look for it.

Q. You did not see any, however?

A. No, I did not see any.

Q. Now after getting that scow on an even keel, what did you do?

A. I put my tow line on with the *Defender* and we started to take her over to Blakely.

Q. When was this, that same day you were there?

A. Yes sir, the same day, that afternoon, and I went as far as West Point with her, and the wind commenced to blow so bad I was afraid of washing the balance of the timber off and we turned around and put her back at the dolphin.

Q. Was it your judgment or the judgment of the *Defender*?

A. We were side by side and talked the thing over, so we went back and tied her up.

Q. You tied her up at the same dolphin?

A. Yes sir.

Q. How long was she tied up there then on your return?

A. I could not tell.

Q. How long were you there?

A. I went into Ballard and telephoned to our office in Seattle and was ordered here.

Q. That is all you know about it?

A. Yes sir.

CROSS EXAMINATION.

MR. DESMOND:

Q. As I understand it, Captain, this was the forenoon of the 13th of December, 1918.

MR. GORHAM: That was wrong. The log shows it was the morning of the 12th.

Q. It was either the 12th or 13th of December, about that time.

A. Yes.

Q. You had not seen this scow before?

A. Not on that particular trip.

Q. Did it indicate that part of its load had been dumped?

A. Oh yes.

Q. As I understand it the stern was under water.

A. Yes.

Q. And the port bow was the only corner that was out of water?

A. Yes sir.

Q. And the hatch on the port bow was open.

A. Yes, that is the one I put on.

Q. When you came up there the *Defender* was lying alongside the scow?

A. No, the scow was hanging on her stern.

Q. You do not know who had been aboard the scow prior to the time you were there?

A. No sir.

Q. You do not know of your own knowledge how that hatch was opened, or what opened it?

A. No sir.

Q. Now you say you did not notice any damage forward on the scow?

A. No sir.

Q. You could not see the stern of the scow.

A. No sir.

(Witness excused.)

Hearing adjourned until June 23, 1921.

JUNE 24, 1921.

Present: MR. GORHAM, for Petitioner.

MR. DESMOND, for Claimant.

MR. GORHAM: It is admitted that the timbers inspected by Hayley on the Bay side at Everett, as testified to by him, were the timbers lost off the scow *Claire*, concerning which this action is brought.

It is admitted that it was high water at Tulalip at 11:31 p. m. on December 11th, and that the tide ebbed thereafter until 4:57 a. m. on the 12th, in the waters of Puget Sound.

It is admitted that in the waters of Puget Sound that the wind and tide running in the same direction, there is no sea kicked up.

MR. DESMOND: Yes.

A. L. McNEALY, a witness called on behalf of Petitioner, being duly sworn, testified as follows:

MR. GORHAM:

Q. You are manager of the Pacific Tow Boat Company?

A. Yes.

Q. Were you manager in December, 1918?

A. Yes sir.

Q. Your company at that time was the owner of the American tug *Defender*?

A. Yes sir.

Q. The tug was in commission and engaged in towing during that month?

A. It was.

Q. And towed the scow *Claire* from the Canyon Lumber Company mill on the river side of Everett, December 11th, that year?

A. Yes sir.

Q. What, if anything, had the Pacific Tow Boat Company done to maintain that vessel, and in what condition was she maintained at that time?

A. The vessel was in good seaworthy condition, and she, like the rest of our boats, we always keep very well equipped with everything necessary, for the class of business they are in.

Q. All appliances for the business in which they are engaged.

A. Yes sir.

Q. And in compliance with all the requirements of the law.

A. Absolutely.

Q. Was she manned by licensed officers?

A. Licensed men and competent men.

Q. Men of experience.

A. Yes sir.

Q. You knew of this accident after it happened?

A. Yes.

Q. Looking back at it, do you know of anything that the Pacific Tow Boat Company could have done prior to the accident, which would have prevented the accident?

MR. DESMOND: I object as incompetent and immaterial, and calling for a conclusion of both fact and law.

A. I think the company and the master both did everything possible to avoid an accident; took all the precautions that a man could take.

Q. Did the company know, further than the telephone communication which Captain Jeffries testified to at Priest's Point, did the company know when or under what circumstances the tug conducted the towage service with the scow *Claire* in tow on December 11th and 12th?

A. No sir.

Q. You did not see the tug that day.

A. No sir.

Q. You have general charge of the business?

A. Yes.

Q. You are the executive officer of the company?

A. Yes sir.

Q. There is a president of the corporation?

A. Yes, there is a president of the corporation, but I have active charge.

Q. And had at that time.

A. Yes sir.

Q. The president does not assume any of these functions?

A. No.

Q. Subsequent to this loss of lumber off the scow, it appears that the tug lay in Lake Union a year and was thereafter dismantled. Do you know how long after this accident she went out of commission, approximately, just by months or years?

A. I do not remember just how long after that we did lay her up, but we laid her up on account of business.

Q. And afterwards decided to remodel her?

A. And afterwards decided to remodel her and do considerable work on her.

Q. What became of her crew, if you know, other than Captain Jeffries?

A. Well, the crews on these boats, they are moving light, and are men who come and go, that is, the majority of them.

Q. That is what we call 'turn-over.'"

A. Yes. Of course, Captain Jeffries has been with me for a number of years before that and is still with me.

Q. The engineers?

A. I was not able to locate the engineers, firemen or cook. We located the deckhand, I think.

Q. Now, Mr. McNealy, you went to Everett before this hearing commenced, and had some photographs taken of this vessel.

A. Yes sir.

Q. Is that you standing on the scow in exhibit "D"?

A. No, that is Mr. Moe.

Q. Is this you standing on the scow in exhibit "A"?

A. Yes sir.

Q. Did you hear Mr. Neimeyer's testimony in this case with reference to there being a split gunnel on the inside bulkhead of the scow, upon the return of the scow to Everett from Port Blakely, during the voyage in controversy?

A. Yes, I heard that testimony.

Q. Did you go down in the hold of the vessel with Mr. Neimeyer?

A. I asked Neimeyer to show me that crack in the gunnel.

Q. At this time when you were at Everett?

A. Yes, at the time when we were there. And Neimeyer says come down here and I will show it to you. So we both went down in the hold of the scow and he looked around it but could not find any crack. And I says, where is the crack? Well, he says, it is here somewhere. And I says show me. But there was no crack there.

Q. Did he show it to you?

A. No split there. No, he could not show it.

Q. Referring to exhibit D, one of the witnesses for the Claimant testified that the gunnel which was cracked was just below the red ink on the photograph marked G. T.?

A. Between these two hatches.

Q. One and two?

A. Yes. Hatch one in red ink, he said the gunnel between 1 and 2, was the one split and there was no split there.

Q. That is the gunnel you did go down to and that is the place you made the investigation.

A. Yes sir. I asked him if there was any other split gunnel, and I said I would like to see it. He said, I don't know where it is. That is about the way he answered.

Q. Was there any broken gunnel? One witness testified it was not split, but broken. Was there any gunnel there broken or split?

A. No.

Q. How close an examination did you make?

A. I looked all around in that gunnel where he said it was.

Q. Would you have seen it if it had been there?

A. Yes sir; I went over it thoroughly.

Q. What was the light in the scow there to enable you to make an examination?

A. There was plenty of light in that end of the scow. I took matches out of my pocket and looked particularly.

Q. Other testimony is that this gunnel was broken or split thirty or forty feet.

A. No, it was not anything of the kind.

Q. Now, Mr. McNealy, if there is anything further concerning which I have not interrogated you, you being the manager of the company, being upon the case, I wish you would testify to it, if you know anything further that would throw any light on this question at issue?

A. There is nothing I can think of just now.

Q. With reference to the salving of the lumber. Mr. Mitchell of the Dominion Mill Company has testified in this case. Did he ask you to make an effort to salve that lumber?

A. Immediately after this accident happened, which is always my custom to do, I called up Mitchell and told him of the accident. He was very anxious to get the lumber in there, I knew. Well, he said, where did the lumber go. I says I don't know, Mitchell, where it went. I says I should think it would go down off Double Bluff there. He says let me know when you find it.

Q. What you call Double Bluff is Skagit Head?

A. Yes sir. We found it over there on Whidby Island, by sending a boat out, and I reported to him where most of it was. I could not find any of it floating. Well, he says, will you look after the picking of it up? I says I will do that for you. He says, you do that and get it together. So we picked it up. It took considerable time to do it, the weather was bad during that time, and we took it into Everett in different lots, and I kept calling Mitchell, and telling him what we had brought it, and asked him if he wanted us to take it over to Blakely. And finally we got it all in, that is all we brought in there. And he said to me one day, he says, I think you better tow it down to Port Blakely. I said, Mitchell, I don't think it is safe to tow in this kind of weather with timber in boomsticks; I says if you get into a storm at all you will lose it again. He says, all right Mack, I will look at it and see if we cannot arrange to pick it up with a derrick or something. And I says I have spent a lot of money picking up the timbers, and he says I can understand it and he says I will see you are taken care of, at least for the better part of it.

Q. Better part of what?

A. Better part of the cost.

Q. Did he go down there to your knowledge, or with you, to Everett to examine the timber?

A. He did not go down with me, but he went down there.

Q. Did you go down?

A. Oh, I was in Everett at various times.

Q. Did you have occasion to make an inspection or examine the timbers in the boom?

A. No, I did not go to the boom to examine it. We have an office there and have men there and a man looking after it; and he kept complaining about the timbers going out, and he had bother to keep them in. And I kept after Mitchell trying to get him to do something.

Q. About how long were they being picked up and brought to the boom, over what period of time did it extend?

A. Probably thirty or forty days.

Q. Do you know when Hayley went down with a gentleman from the Canyon Mill to look over that?

A. I don't know. I did not know of that until a considerable time afterwards.

Q. That is only hearsay.

A. Yes. I did not know at the time Hayley went down.

Q. Do you know that he went down subsequent to all the timbers being picked up, or before they were all picked up?

A. It was sometime after we stopped picking the timbers up, Moe told me that Hayley and Hambridge went down there.

MR. DESMOND: I move to strike what the witness was told.

MR. GORHAM: It may be stricken, of course.

Q. What finally became of the lumber?

A. The timber has gradually worked out of the boom-sticks. Our boom is right on the river, and considerable current there, and we are moving logs in and out of there all the time, and they gradually worked out of the sticks.

Q. And went to sea?

A. And went to sea.

Q. Mitchell never came to get them?

A. No.

Q. Did your company know of any unseaworthy condition in the scow *Claire* on December 11th, 1918?

A. No sir.

Q. Had your company been advised as to any unseaworthy condition of the scow at that time when this tug was sent for that tow?

A. No.

Q. And when you send your tugs out on towage service you rely upon the judgment of the master?

A. Entirely with reference to weather or time to go or not to go.

Q. And care is taken by your company to see that the men are competent men in charge of your vessels?

A. Yes sir.

CROSS EXAMINATION.

MR. DESMOND:

Q. You were not there at the time the tug took the scow out of the Snohomish river?

A. No sir.

Q. You were not aboard the tug that day?

A. No sir.

Q. Nor were you aboard the scow *Claire*.

A. No sir.

Q. Did you or any of your employees or servants, make any examination of the scow *Claire* before taking the tow out?

A. The captain has testified to that.

Q. When did you see the tug *Claire* after the accident?

A. Not until this pictures were taken.

Q. When was that?

A. That was this year.

Q. Had the scow been in service in the meantime, do you know?

A. I don't know as to that.

Q. Do you know how much timber was impounded in your boom at Everett?

A. Without the figures here, I could not; I have forgotten now.

Q. That is in the record.

A. I think it is in the record.

Q. When did you dismantle the tug?

A. That was in the latter part of last year.

(Witness excused.)

MR. GORHAM: We rest.

United States of America, }
 Western District of Washington, } ss.
 Northern Division. }

I, A. C. BOWMAN, a Commissioner of the United States District Court for the Western District of Washington, residing at Seattle, Washington, do hereby certify that

The foregoing transcript from page 1 to page 200, both inclusive, contains all of the testimony offered by the parties to said cause. The several witnesses, before examination, were duly sworn to testify the whole truth. I reduced their testimony to writing in shorthand and thereafter caused the same to be typewritten; and I certify the foregoing to be the testimony given by the said witnesses at the times therein indicated.

The exhibits offered, as shown by the testimony and index, have been properly identified and are returned herewith.

Proctors for the parties waived the reading and signing of the testimony given by the several witnesses.

I further certify that I am not of counsel nor in any way interested in the result of said cause.

Witness my hand and official seal this 27th day of June, 1921.

A. C. BOWMAN,
U. S. Commissioner.

Commissioner's Taxable Costs:

Petitioner's costs, \$31.30.

Claimant's costs, \$63.50.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, June 29, 1921.

F. M. HARSHBERGER,
Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

In the Matter of the Petition of the Pacific Tow Boat Company, a corporation, owner of the American Tug DEFENDER, for Limitation of Liability.

In Admiralty—No. 5207.

DECISION.

Filed July 19, 1921.

WILLIAM H. GORHAM, Proctor for Petitioner.

RYAN & DESMOND, Proctors for Claimants, Dominion Mill Co.
NETERER, *District Judge.*

The issue here is a question of fact. It is conceded that liability may be limited if negligence is shown, and in that event the decree shall not exceed the sum of \$2,700.00, the appraised value of the tug. The facts to be found are the seaworthy condition of the scow, the negligence of the claimant, if any, and the amount of damage, if any, to be decreed. From the testimony it must be concluded that the scow at the time it was taken by the petitioner was seaworthy. It was very recently placed in "good condition." It was inspected by Wilson, the repairman for claimant. A few days before the casualty it was towed from Everett to Anacortes,

and found in good condition. It was examined by the master of petitioner at the time it was taken and found that it had not water enough to siphon. It also appears that it was properly loaded. This was the status when the petitioner took the scow. It was taken into the open waters of the Sound and approximately 250,000 feet of lumber was lost. Something less than 50,000 feet was delivered. The petitioner asserts that it was free from negligence and that the fault was with the scow, because of age, decay &c., she was unseaworthy. The only testimony of negligence is that the scow went onto the bank in the river, and also some testimony that the condition of the weather was such by reason of strong wind that a careful master would not venture out. There is also testimony as to the condition of the scow after she reached the mill. A long crack near her top seam in one corner; and one of the timbers in the gunnel was split. There is no continuity of evidence as to the scow from the time of delivery until the survey about ten days after, during which time she was on the beach. It is impossible to harmonize all of the evidence. The court from the evidence must find that the scow collided with the bank of the river. Two disinterested witnesses so swear. The extent of the damage, if any, no one who testified saw. The master swears he examined the scow at Priest Point after the time of collision charged before entering the open waters of the Sound, and found her to be all right. Entering the open waters of the Sound the lumber was lost. It must be concluded in view of the testimony that either the running on to the bank or the turbulent condition of the water occasioned the loss, and in either event the petitioner was at fault and should respond, and under Sections 4283 and 4284, Rev. Stat. the liability may be limited to the value of the tug. It is earnestly contended by the petitioner that even though the tug was negligent, that practically all of the lumber was salvaged and placed in a boom at Everett and testimony is produced that one man with a crosscut saw could in one day trim all of the damaged timber, so there would be no loss. The testimony, I think, shows that the damage by reason of the rounding of the edges of the square timber could not be compensated in the manner indicated. Again it was the duty of the petitioner to deliver the cargo at Blakely Island, and could not relieve itself from liability by placing the timbers in a boom at Everett and notifying the claimant of such fact. The damage to the claimant is more than twice as much as the appraised value of the tug, and it appears from the testimony that the cost to recondition the lumber, and difference in value, it being a special order, and place it either at the point of shipment or destination would be as much at least

as the value of the tug, and for this expense the claimant could recover in any event.

A decree may accordingly be presented.

JEREMIAH NETERER,
Judge.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Feb. 19, 1921.

F. M. HARSHBERGER,
Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

In the Matter of the Petition of the Pacific Tow Boat Company, a corporation, owner of the American Tug DEFENDER, for a Limitation of Liability.

In Admiralty—No. 5207.

FINAL DECREE.

The Petitioner, the Pacific Towboat Company, a Washington corporation, owner of the American Tug "*Defender*," having, on or about the 2nd day of April, 1920, filed in this court its petition, alleging, among other things, that the Claimant, the Dominion Mill Company, was then prosecuting an action in the Superior Court of the State of Washington, for King County, against the petitioner, claiming damages for loss at sea of 248,206 feet of lumber, which was of the value of Seven Thousand Four Hundred Forty-six and 18/100 (\$7,446.18) Dollars.

Said Petition further alleged that the value of the tug, at the time said towage service was being rendered, including the towage charge of Seventy-five (\$75.00) Dollars, did not equal the amount of said damage claimed, and prayed that the liability of the Petitioner be limited to the value of said tug and the earned towage charges.

AND, THEREAFTER, this court caused an appraisal of said tug to be made, as of date of December 12th, 1918, which appraisal is for the amount of Two Thousand Eight Hundred Seventy-five (\$2,875.00) Dollars, together with interest thereon from date of December 12th, 1918; and the Petitioner entered into a stipulation and bond with the United States Fidelity & Deposit Company, of Maryland, as

surety, to pay all costs in said action, not exceeding the amount of Two Hundred Fifty (\$250.00) Dollars; and said Petitioner and Surety above named further stipulated to pay the further amount of Two Thousand Eight Hundred Seventy-five (\$2,875.00) Dollars, with interest from December 12th, 1918, into the registry of this court for the benefit of any claimant.

AND, THEREAFTER, the Dominion Mill Company, a corporation, organized under the laws of the State of California, and authorized to do business in the State of Washington, duly and regularly filed its claim in said cause against the tug above named, claiming damages for the loss of 248,206 feet of lumber, of the reasonable value of Seven Thousand Four Hundred Forty-six and 18/100 (\$7,446.18) Dollars, on account of the careless and negligent acts of the said tug "*Defender*" in towing the said scow of lumber for the claimant.

AND, THEREAFTER, an Order of Reference was by this court made wherein the matter was referred to United States Commissioner, A. C. Bowman, for the taking of testimony, the taking of which having begun on the 16th day of March, 1921, and completed on the 24th day of June, 1921; said testimony was by the Commissioner transcribed and certified, and this court having examined the said testimony, and arguments by the proctors for the petitioner and claimant, having been heard, and being now in all ways fully advised in the premises:

IT IS BY THE COURT ORDERED, ADJUDGED and DECREED:

I.

That the claim of the Dominion Mill Company be allowed against the tug "*Defender*," in the full amount of her appraised value, being the sum of Two Thousand Eight Hundred Seventy-five (\$2,875.00) Dollars, together with interest thereon at the rate of Six (6%) per cent per annum from date of December 12, 1918;

II.

That said Petitioner, the Pacific Towboat Company, and its surety, the Fidelity & Deposit Company, a corporation, of Maryland, be and they hereby are directed to forthwith pay into the registry of this court, for the benefit of the claimant, the full amount provided within said stipulation, being the amount of Two Thousand Eight Hundred Seventy-five (\$2,875.00) Dollars, together with interest thereon at

the rate of Six (6%) per cent per annum from date of December 12th, 1918.

III.

That the claimant, the Dominion Mill Company, have judgment against the Petitioner, the Pacific Towboat Company, and its surety, the Fidelity & Deposit Company of Maryland, for the amount of its costs herein incurred.

IV.

That in the event of default on the part of the said Petitioner, or its surety, forthwith to pay the above sums into the registry of this court, execution may issue against their goods, chattels and lands for the said sums.

V.

That upon the payment of the above amounts, by the said Petitioner and its surety, there shall be no further liability on behalf of said Petitioner, or its surety, to the Claimant for any sums whatsoever on account of damage sustained, as set forth in its claim.

DONE IN OPEN COURT this 2d day of August, A. D. 1921.

JEREMIAH NETERER,
Judge.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Aug. 2, 1921.

F. M. HARSHBERGER,
Clerk

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION.

In Admiralty—No. 5207.

In the Matter of the Petition of the Pacific Tow Boat Company, a corporation, owner of the American Tug DEFENDER, for a limitation of liability.

ORDER FIXING AMOUNT OF SUPERSEDEAS AND AMOUNT OF BOND FOR COSTS AND INTEREST ON APPEAL.

Upon motion of the petitioner in the above entitled Matter for an order herein fixing the amount of supersedeas and amount of bond for costs and interest on appeal.

It is ordered that the amount of the bond to be given by

said petitioner herein upon appeal be fixed in the sum of \$500.00 as a supersedeas to cover the costs of the suit and just damages for delay and the further sum of \$250.00 to cover costs and interest on appeal.

Dated, Seattle, August 2, 1921.

JEREMIAH NETERER,
Judge.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Aug. 2, 1921.

F. M. HARSHBERGER,
Clerk

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

In Admiralty—No. 5207.

In the Matter of the Petition of the Pacific Tow Boat Company, a corporation, owner of the American Tug DEFENDER, for a Limitation of Liability.

NOTICE OF APPEAL.

To the Dominion Mill Company, a corporation, claimant in the above entitled matter, and to Messrs. Ryan & Desmond, its Proctors:

You and each of you will please take notice that the Pacific Tow Boat Company, a corporation, the above named petitioner, hereby appeals from the final decree of the above entitled court in the above entitled matter and from the whole thereof, which decree was made, entered and filed in said matter on the 2nd day of August, 1921, to the United States Circuit Court of Appeals for the Ninth Circuit.

PACIFIC TOW BOAT COMPANY,
Petitioner.

WILLIAM H. GORHAM,
Proctor for Petitioner.

Due service of the within Notice of Appeal after the filing of the same in the office of the Clerk of the above entitled Court in the above entitled Matter, admitted this 2nd day of August, 1921.

RYAN & DESMOND,
Proctors for Dominion Mill Company, Claimant in the above entitled Matter.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, August 2, 1921.

F. M. HARSHBERGER,
Clerk.

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

In Admiralty—No. 5207.

In the Matter of the Petition of the Pacific Tow Boat Company, a corporation, owner of the American Tug DEFENDER, for a Limitation of Liability.

BOND ON APPEAL.

Know All Men by These Presents: That we, the Pacific Tow Boat Company, a corporation, the above named petitioner, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto the Dominion Mill Company, a corporation, claimant in the above entitled Matter, in the full sum of seven hundred and fifty (\$750.00) dollars to be paid to said Dominion Mill Company, its successors and assigns, for which payment well and truly to be made we bind ourselves, our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 2nd day of August, 1921.

Whereas, lately at a District Court for the Western District of Washington, Northern Division, in a proceeding pending in said court on the petition of said Pacific Tow Boat Company, owner of the American Tug *Defender*, for a limitation of liability, wherein said Dominion Company was and is claimant, a decree was rendered against said petitioner and in favor of said claimant; and said petitioner having filed in the office of the Clerk of said District Court and served on proctors for said claimant, in said proceedings, a notice, signed by said petitioner, that said petitioner appeals to the United States Circuit Court of Appeals for the Ninth Circuit from said decree and the whole thereof;

Now therefore, the condition of this obligation is such, that if the above bounden principal shall prosecute its appeal to effect and pay the costs if said appeal is not sustained and if said principal will abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit, or on the mandate of said

United States Circuit Court of Appeals for the Ninth Circuit by said District Court, then this obligation to be void, otherwise to be and remain in full force and effect.

PACIFIC TOW BOAT COMPANY.

By A. F. McNEALY, *Its Manager.*

FIDELITY AND DEPOSIT CO. OF MARYLAND.

J. A. CATHCART, *Attorney in Fact.*

Approved:

RYAN & DESMOND,

Attorneys for Claimant.

Bond approved this 2nd day of August, 1921.

JEREMIAH NETERER, *Judge.*

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, August 2, 1921.

F. M. HARSHBERGER,

Clerk.

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

In Admiralty—No. 5207.

In the Matter of the Petition of the Pacific Tow Boat Company, a corporation, owner of the American Tug DEFENDER, for a Limitation of Liability.

ASSIGNMENT OF ERRORS.

Comes now the Pacific Tow Boat Company, the above named petitioner, and assigns as error in the findings, conclusions and decree of the above entitled court in the above entitled matter:

1. That the court erred in finding that it must be concluded that the scow at the time it was taken in tow by the petitioner was seaworthy.
2. The court erred in finding that the scow was properly loaded.
3. The court erred in finding that the scow collided with the bank of the river.
4. The court erred in finding that either the scow running into the bank or the turbulent condition of the waters occasioned the loss of the lumber.

5. The court erred in concluding that in either of said events the petitioner was at fault.

6. The court erred in finding that the damage to the lumber by reason of the rounding of the edges of the square timbers could not be compensated by one man with a cross-cut saw trimming the same in one day.

7. The court erred in concluding that it was the duty of the petitioner to deliver the cargo at Blakely Island and could not relieve itself from liability by placing the timbers in a boom at Everett and notifying the claimant of such fact.

8. The court erred in finding that the damage to claimant was more than twice as much as the appraised value of the tug.

9. The court erred in finding that the cost to recondition the lumber would be as much at least as the value of the tug and in concluding that this expense the claimant could recover in any event.

10. The court erred in entering a decree against petitioner and in favor of claimant in the sum of \$2,875.00 together with interest and costs, or in any sum whatever.

11. The court erred in not entering a decree adjudging that the petitioner and said tug *Defender* are not and neither of them is liable to any extent or at all for the loss, damage or injury alleged to have been sustained by claimant as in its answer to the petition herein set forth.

WILLIAM H. GORHAM,
Proctor for Petitioner.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, August 2, 1921.

F. M. HARSHBERGER,
Clerk.

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

In Admiralty—No. 5207.

In the Matter of the Petition of the Pacific Towboat Company, a corporation, owner of the American Tug DEFENDER, for a Limitation of Liability.

ORDER SENDING UP THE ORIGINAL EXHIBITS

Upon motion of the petitioner in the above entitled matter, good cause being shown,

It is now by the undersigned presiding Judge in said court ordered that all the original exhibits introduced in evidence and filed herein be sent up by the Clerk of this court as a part of the record on appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit, instead of copies thereof.

Dated, Seattle, September 8, 1921.

JEREMIAH NETERER,
Judge of the Above Entitled Court.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, September 8, 1921.

F. M. HARSHBERGER, *Clerk.*
S. E. LEITCH, *Deputy.*

IN THE UNITED STATES CIRCCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 5207.

In the Matter of the Petition of the Pacific Towboat Company, a corporation, owner of the American Tug DEFENDER, for a Limitation of Liability.

PACIFIC TOW BOAT COMPANY, a corporation, *Petitioner-Appellant*, vs. DOMINION MILL COMPANY, *Claimant-Appellee*.

STIPULATION.

It is hereby stipulated and agreed by and between the parties hereto, through their respective proctors undersigned, that the claimant and appellee may file its appearance in the above entitled court and cause at any time subsequent to the filing of appellant's record therein and prior to the date set for hearing of the appeal herein.

Dated at Seattle, Washington, this 27th day of August, 1921.

WILLIAM H. GORHAM,
Proctor for Petitioner-Appellant.

RYAN & DESMOND,
Proctors for Claimant-Appellee.

Endorsed: Filed in the United States District Court,

Western District of Washington, Northern Division, September 8, 1921.

F. M. HARSHBERGER, *Clerk.*
S. E. LEITCH, *Deputy.*

UNITED STATES CIRCUIT COURT OF APPEALS FOR
NINTH CIRCUIT.

No. 5207.

In the Matter of the Petition of the Pacific Tow Boat Company, a corporation, owner of the American Tug DEFENDER, for a Limitation of Liability.

PACIFIC TOW BOAT COMPANY, a corporation, *Petitioner-Appellant*, vs. DOMINION MILL COMPANY, a corporation, *Claimant-Appellee*.

STIPULATION.

It is hereby stipulated by the parties hereto:

That an order may be entered in the above entitled cause by any Judge of the above entitled court or by the Judge who signed the Citation on Appeal in said cause, enlarging and extending the time for filing the record and docketing said cause on appeal in the above entitled court by petitioner-appellant, to December 1st, 1921.

Dated August 27, 1921.

WILLIAM H. GORHAM,
Proctor for Petitioner-Appellant.

RYAN & DESMOND,
Proctors for Claimant-Appellee.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, September 8, 1921.

F. M. HARSHBERGER, *Clerk.*
S. E. LEITCH, *Deputy.*

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

In Admiralty—No. 5207.

In the Matter of the Petition of the Pacific Tow Boat Company, a corporation, owner of the American Tug DEFENDER, for a Limitation of Liability.

PRAECIPE FOR APOSTLES.

To the Clerk of the Above Entitled Court:

Herewith I hand you 25 printed copies of the Apostles on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, consisting of the following:

1. A caption exhibiting style of court and cause;
2. Index;
3. Statement complying with Rule 4, Section 1, of the Rules in Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit;
4. Petition for limitation of liability;
5. Order appointing appraisers;
6. Appraisers' report;
7. Order confirming appraisers' report;
8. Stipulation to pay appraised value;
9. Order for monition and restraining order;
10. Monition and return of U. S. Marshal thereon;
11. Answer to petition for limitation of liability;
12. Report of U. S. Commissioner with claim of Dominion Mill Company.
13. Stipulation limiting amount of recovery by claimant;
14. Order of reference;
15. All the testimony contained in report of referee;
16. Memorandum decision of court;
17. Final decree;
18. Order fixing amount of supersedeas;
19. Notice of appeal;
20. Bond on appeal;
21. Assignment of errors;
22. Stipulation as to appearance of appellee on appeal;
23. Stipulation enlarging time to file record and docket cause on appeal;
24. Order sending up original exhibits;
25. This praecipe;

one of which copies you will please certify under your hand and the seal of the court and the remainder of which bear such certificate in printed form, and all of which you will please forward, together with the original Citation and the original exhibits under a separate certificate by you, to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, for filing and docketing of said cause on appeal therein.

WILLIAM H. GORHAM,
Proctor for Petitioner-Appellant.

Service of within praecipe on this 20th day of September, 1921, admitted.

RYAN & DESMOND,
Proctors for Claimant-Appellee.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, October 11, 1921.

F. M. HARSHBERGER,
S. E. LEITCH, *Deputy.*
Clerk.

IN THE UNITED STATES DISTRICT COURT, WEST-
ERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

In Admiralty—No. 5207.

In the Matter of the Petition of the Pacific Tow Boat Company, a corporation, owner of the American Tug DEFENDER, for a Limitation of Liability.

United States of America,
Western District of Washington, ss.

I, Frank M. Harshberger, Clerk of the United States District Court for the Western District of Washington, Northern Division, do hereby certify the foregoing printed pages, numbered 1 to 166, inclusive, to be a true, full, correct and complete copy of the record and proceedings in the above entitled cause as is called for by the praecipe of the petitioner-appellant a part thereof, as the same remains of record and on file in the office of the Clerk of said court, and that said printed pages, together with the original exhibits, separately certified, constitute the record on appeal from the final decree of the United States District Court for the Western District of Washington, Northern Division, to the United

States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

I further certify the following to be a true, full and correct statement of the expenses, costs, fees, and charges incurred and paid into my office by and on behalf of petitioner-appellant for preparing and making the record certificate or return, and apostles on appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to-wit:

Clerk's fee for preparing and making record and apostles of appeal:

713 folios at 15 cents per f.	\$106.95
Certificate of Clerk to transcript of record.....	.60
Seal to said certificate.....	.20
Certificate to original exhibits.....	.30
Seal to said certificate.....	.20
Statement of cost of printing said transcript, collected and paid.....	274.40

I hereby further certify that the above cost for preparing, making, certifying and printing said record, amounting to \$382.65, has been paid me by William H. Gorham, proctor for petitioner-appellant.

I further certify that I hereto attach and herewith transmit the original Citation issued on appeal in said cause.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said United States District Court for the Western District of Washington, at Seattle, Washington, this 1st day of November, 1921.

F. M. HARSHBERGER,
Clerk.